Before S.J. Vazifdar, CJ
Harinder Singh Sidhu &
Avneesh Jhingan, JJ.

RAJIV MANCHANDA AND OTHER—*Petitioners*

versus

HARYANA URBAN DEVELOPMENT AUTHORITY AND ANOTHER—*Respondents*

C.W.P No. 22252 of 2016

November 22, 2017

Constitution of India, 1950—Art. 141 and 226—Haryana Urban Development Authority Act, 1977—Land Acquisition Act, 1894— Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013—Petititoners challenged policies governing rights of oustees to allotment of plots/sites—Particularly the cap/extent of reservations meant for oustees and price of allotment—Petitioners also argued that even if they had failed to apply for allotment under oustees quota, their rights not extinguished, further, authorities bound to first satisfy claim of oustees then make allotments to others.

Petitioners also canvassed that the judgment rendered in Sandeep's case was per incuriam, and Supreme Court had not laid down any ratio, therefore, was not binding on the High Court.

High Court held that the judgment of the Supreme Court in Sandeep's case upholding the Division Bench judgment of the High Court, could not be ignored merely because it does not notice all the facts and propositions of law in detail—The judgment of the Supreme Court specifically, noticed the Division Bench judgment of the High Court and upheld it—Therefore, Full Bench of High Court bound by Division Bench judgment rendered in Sandeep's case—Any other interpretation would amount to judicial indiscipline.

Held that Mr. Bali, Mr. Punchi, Mr. Narender Singh, Mr. Sandeep Sharma and Mr. Sanjay Vashisth, Advocates appearing for the petitioners in a group of petitions including Civil Writ Petition Nos. 22252 of 2016, 2747 of 2017, 5927 of 2017, 22018 of 2016 and 24361 of 2016 strongly submitted that this order does not contain any ratio and does not serve as a precedent. As we mentioned above, it is not necessary to analyze this order to determine whether the judgment in

Sandeeps case was affirmed by the Supreme Court or not as the Supreme Court once again dealt with it while disposing of the appeal against the order and judgment of this Court in Ved Pal's case. The appeal before the Supreme Court against the judgment in Ved Pal's case was disposed of by an order and judgment dated 12.03.2014. The Supreme Court inter-alia held:-

> "5. The High Court by its common judgment and order had disposed of the writ petitions and further directed the appellant-Development Authority to float a scheme before putting the lands to the general public for allotment of plots and the size as may be available depending upon the oustee policies.
>
> 6. Aggrieved by the directions so issued by the High Court, the Development Authority is before us in these appeals.
>
> 7. We have heard Shri Neeraj Kumar Jain, learned senior counsel appearing for the Development Authority and learned counsel for the respondents/land losers. We have carefully perused the documents on record and the judgment and order(s) of the Courts below.
>
> 8. In our considered view, the direction issued by the High Court runs counter and contrary to the judgment and order passed by the very same Court in the case of Haryana Urban Development Authority and Ors. *versus* Sandeep and Ors. (LPA No. 2096 of 2011) & connected cases, dated 25.04.2012 which decision has been approved by this Court while rejecting the appeals filed by the Development
>
> Authority against the said judgment and order in SLP(c) No. 23933 of 2012 and other connected matters by order dated 06.03.2014.
>
> 9. In view of the above, we dispose of the appeals and now direct the appellant- Development Authority to float an allotment scheme for the land losers whose lands have been acquired by the Development Authority for establishment and development of residential area as Sectors 55 and 56, Gurgaon as expeditiously as possible within six months from the date of receipt of copy of this Court's order. While floating the scheme the Development Authority will keep in view the directions issued by the High Court in Sandeep's case (*supra*) as confirmed by us.

> 10. With these observations and directions, the appeals are disposed of."
>
> (emphasis supplied)

(Para 17)

Further held that these two orders and judgments of the Supreme Court when read together establish that the Supreme Court upheld the judgment in Sandeep's case but not the judgment in Ved Pal's case at least insofar as it is contrary to Sandeep's case. This is especially clear from the judgment dismissing the appeal against the judgment in Ved Pal's case.

(Para 18)

Mr. Bali submitted that the orders and judgments of the Supreme Court in Sandeep's case and Ved Pal's case are not precedents, contain no ratio and ought to be totally ignored. He further submitted that these orders of the Supreme Court are *per incurrium* and are contrary to the judgment of the Supreme Court in *Brij Mohan v. Haryana Urban Development Authority (2011) 2 SCC 29*, and must, therefore, also be ignored by this Court, by the State of Haryana and by the Haryana Urban Development Authority.

(Para 19)

Mr. Bali's and Mr. Punchhi's contention on behalf of the petitioners that the observations of the Supreme Court in the above judgments are not ratio and must be ignored altogether is not well founded. The judgments when read together and especially the judgment of the Supreme Court in Ved Pal's case establishes, for more reasons than one, that the Supreme Court upheld the judgment of this Court in Sandeep's case and cannot be ignored by this Court.

> (A) In paragraph-7, the Supreme Court observed: "We have carefully perused the documents on record and the judgment and order(s) of the Courts below". To uphold the contention on behalf of the petitioners, we would have to ignore this observation with a finding that the Supreme Court had actually not carefully perused the documents on record and the judgment and orders of this Court. We are, but naturally neither inclined to do so nor entitled to do so.
>
> (B) In paragraph-8, the Supreme Court observed that the Division Bench judgment in Ved Pal's case runs counter and contrary to the judgment and order passed in Sandeep's case. Having said so, the Supreme Court observed that the decision in

Sandeep's case had been approved by the Supreme Court while rejecting the appeals filed by the official respondents. The Supreme Court, therefore, itself held in Ved Pal's case that it had approved the decision in Sandeep's case. We cannot ignore this observation or brush it aside as we were invited to. If we were to accept the submission that would amount to our saying that the Supreme Court had not approved the judgment in Sandeep's case which is directly contrary to what the Supreme Court itself said namely that it had approved the judgment in Sandeep's case.

(C) The doubt, if any, is set at rest by the last sentence of paragraph-9 of the judgment of the Supreme Court in Ved Pal's case: "While floating the scheme, the Development Authority will keep in view the directions issued by the High Court in Sandeep's case (*supra*) as confirmed by us". The Supreme Court, therefore, once again stated that it had confirmed the judgment in Sandeep's case. Nothing can be clearer.

(D) Moreover, the authorities were directed to float the scheme keeping in view the directions issued by this Court in Sandeep's case. If the Supreme Court had not affirmed the judgment in Sandeep's case, there would be no question of the Supreme Court directing the official respondents to float the scheme in accordance with the directions issued in Sandeep's case. If we were to re-examine the ratio in Sandeep's case and come to a contrary view and issue directions to the authorities accordingly, they would be contrary to the directions of the Supreme Court. This is a clear answer against the petitioners' contention that we are entitled to take a view contrary to Sandeep's case.

(E) Even thereafter the Supreme Court consistently followed its judgment in Sandeep's case. For instance, the Supreme Court by an order and judgment dated 14.01.2015 in a group of petitions for Special Leave to Appeal, the first of which was SLP No.26147 of 2011 in the case of *Haryana Urban Development Authority and others versus Krishna*, held as follows:-

> "The present special leave petition is directed against the orders passed by a Division Bench of Punjab and Haryana at Chandigarh in LPA No. 897 of 2011, dated 20.05.2011, whereby and whereunder the Division Bench refused to

> interfere with the order passed by the learned Single Judge issuing certain directions to the petitioner herein, that is Haryana Urban Development Authority,(for short "the HUDA").
>
> By the impugned judgment and order, the Division Bench of the High Court upheld the direction to the HUDA to consider the claim of the respondent herein for the allotment of a plot in accordance with the former's policy.
>
> It has been brought to the notice of this Court that the issues raised in the present special leave petition is covered by another judgment of the High Court of Punjab and Haryana as upheld by this Court. Therefore, in our considered opinion, we need not to go into the details of the case. The special leave petition can be disposed of on a very short ground that would satisfy the interest of both the parties.
>
> Accordingly, we dispose of this special leave petition with a direction that if the respondent's application is pending for consideration for allotment of a plot under the Oustees quota, the same shall be considered by the HUDA in accordance with law and in the light of the judgment and order passed by the High court in the case of the *Haryana Urban Development Authority & Ors. vs. Sandeep & Ors*., L.P.A. No. 2096 of 2011 etc., dated 25.04.2012, within eight weeks' time from the date of receipt of copy of this Court's order."
>
> (emphasis supplied).
> (Para 20)

The question of our considering the correctness of the judgment of the Division Bench of this Court in Sandeep's case, therefore, cannot arise. It would also be contrary to the similar directions of the Supreme Court in its order and judgment dated 14.01.2015 in *Haryana Urban Development Authority and others v. Krishna* where the Supreme Court issued a specific direction that the application of the respondent therein for allotment shall be considered by HUDA in accordance with law and in the light of the judgment and order passed by the High Court in Sandeep's case.

(Para 21)

Further held that the judgment of the Division Bench of this Court in Sandeep's case was upheld by the Supreme Court. It is not

open for us to take a view contrary to the one taken by this Court in Sandeep's case. We are bound by the judgment of this Court in Sandeep's case. Over-ruling the judgment of this Court in Sandeep's case would result in a direct violation and contravention of the orders and judgments of the Supreme Court in Sandeep's case and in Ved Pal's case. It would amount to judicial indiscipline.

(Para 22)

Further held that in Ved Pal's case, the Supreme Court in paragraph-7 stated "we have carefully perused the documents on record and the judgment and orders of the Courts below". Thus the judgment in turn had referred to the relevant policies, judgments and statutory provisions. It is hardly open then for us to say that although the Supreme Court said that it had carefully perused the documents on record and the judgments and orders of the Courts below, they were infact careless and ignorant of the relevant provisions of the law. Nor is it open to us to ignore the judgment of the Supreme Court on the ground that the judgments of the Supreme Court are sub-silentio or that the points of law were not perceived by the Supreme Court or were not present to its mind. Much less is it open to us to say that the judgments were without application of mind or without any reasons. The judgment, therefore, is of no assistance to the petitioners.

(Para 25)

Further held that in *ICICI Bank and another v. Municipal Corporation of Greater Bombay and others, 2005(4) SCC 404*, it was held that it is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment. In Sandeep's case, however, the questions expressly fell for consideration and in any event were considered in depth. The Supreme Court said that it had considered the same and the matter ends there. There is no question of this Court testing that statement which is what we were invited to do.

(Para 26)

Further held that it was suggested that the judgments of the Supreme Court ought to be ignored because they do not themselves set out all the facts and the propositions of law. This approach is entirely incorrect. The judgments of the Supreme Court especially in Ved Pal's case and Sandeep's case clearly state that the Supreme Court had considered the judgments, the record and the provisions of the law

before confirming the judgment in Sandeep's case. It is not open to us to ignore this judgment merely because the Supreme Court itself did not set out the facts. That would be an act of judicial indiscipline.

(Para 30)

High Court further held that the authorities could reserve up to 50% of the plots/sites for oustees, but the exact extent of reservation left to the authorities.

Held that the question does not admit of any difficulty. Once it is held that the respondents are entitled to reserve only upto a maximum of 50% of the plots including towards the oustee quota, the extent of reservation is a matter of policy which must be left at least in the first instance to the respondents. The respondents are entitled to determine the policy in this regard. It is not for the Court to decide the extent of the reservation. So long as the reservation is fixed on a rational criteria, the Court ought not to substitute its view for that of the policy maker.

(Para 44)

Further held that Administrator of HUDA has filed an affidavit justifying the extent of reservation for the oustees. The affidavit inter-alia states as follows: There are already existing reservations ranging from 27% to 69% in different sizes of plots. A certain number of plots are required to be provided for NRIs and for persons who have distinguished themselves in the field of science, technology, art, culture, social service, judiciary, sports, defence and domiciles of Haryana. The extent of reservation, therefore, required modification. After the decision in Sandeep's case, the plots were reserved under the oustee's quota as well. After considering the competing demands, HUDA has reserved for oustees 10% of 8 marlas plots and 12% of plots above 8 marlas. The decision was taken after a detailed consideration of the data collected by the HUDA. We are unable to say that the decision was not an informed one. It is not for the Court to interfere with the extent of reservation unless it can be said that the extent of reservation was not based on valid criteria.

(Para 45)

*Further held that t*he submission that the extent of reservation is not based on any rational criteria is not well founded.

(Para 46)

Further held that at the time of pronouncing the judgment, a further aspect was sought to be raised. The oustees are entitled to plots of different sizes. The grievance is that the respondents seldom make a reservation under the oustee quota with respect to the plots of smaller sizes. The number of plots of a given size to be reserved under the oustee quota is a matter of policy which must be left to the respondents. There are various factors which the respondents would have to take into consideration while undertaking this exercise. The distribution, however, must be fair and based on rational criteria. Unless the distribution is arbitrary or *mala fide*, the Court ought not to interfere with the same.

(Para 47)

Court further held that the price of allotment would be the prevailing market price at the time of allotment—However, if the delay in allotment is entirely attributable to the authorities, then the price will be pegged to the time at which the allotment ought to have been made, with reasonable interest to be paid by an oustee.

Further held that another aspect of this question also requires consideration. It pertains to the price payable by an oustee who although entitled to be allotted a plot on a particular date and could have been allotted a plot on that date was allotted the plot much later. The answer to this question would depend upon the circumstances in which the oustee was not allotted a plot on the date which he was entitled to and could have been allotted the same but was allotted the plot later. We have advisedly stated the situation to be one where the allottee was not merely entitled to be allotted the plot but also could have been allotted the plot. Where for any reason the plot could not have been allotted, this question would not arise.

(Para 79)

Further held that where the oustee is at fault or was for any reason responsible for the same, he must pay the price prevalent as stipulated in the last sentence of paragraph-53 of the judgment of this Court in Sandeep's case, namely, the price prevalent in the advertisement inviting applications and pursuant to which the oustee was actually allotted the plot. There is no reason why in such circumstances the oustee should have the benefit of a price that was prevalent earlier, sometimes even many years ago.

(Para 80)

Further held that where both the oustee and the respondents are at fault or were responsible for the same or where neither is at fault for the same, the same rule ought to apply. Even in such circumstances there is no warrant for permitting the oustee the benefit of a price that was prevalent many years ago. There is no reason for excluding such cases from the rule in the last sentence in paragraph-53 of Sandeep's case.

(Para 81)

Further held that there is yet another situation that must be dealt with, namely, where the respondents are entirely at fault. This is a situation where the oustee was entitled to a plot on a particular date and it was possible for the respondents to allot the plot on that date but they did not do so entirely on account of their default and not on account of any default on the part of the oustee. The ultimate allotment of the plot may even result at the end of a protracted litigation. When a court passes an order in favour of such an oustee, it infact holds that the oustee was entitled to the plot when he had made the application and was entitled to the allotment on that date and the respondents were in a position to handover the possession of the plot on that date but wrongly did not do so. In such circumstances it follows that the oustee would be entitled to the benefit of the price that was prevalent when he made the application and pursuant to that application the respondents deliberately did not allot the plot although they could have.

(Para 82)

Further held that however, even in such a case, the oustee must pay reasonable interest from the date on which he could have been given the possession of the plot till the date he is actually given the possession of the plot, for in such a case the oustee has had the benefit of the use of his money during this period. We appreciate that such an oustee would have been deprived during this period of the use of the plot. This further fine tuning adjustment would require evidence and cannot conveniently be decided in a writ petition.

(Para 83)

Further held that an oustee's right to allotment will not be extinguished even if he had not made an application under the oustees quota in response to an advertisement—He can apply later, and if plots are available, he will be entitled to allotment.

Further held that thus an oustee who is not allotted a plot although, he applied for it, does not lose his entitlement to be considered for the allotment of a plot in future under the same category.

Even if an oustee does not apply in response to the advertisement, he is not disentitled from submitting an application for the allotment of a plot under the oustee category subsequently. The price at which the allotment is to be made will be dealt with next.

(Para 66)

The Court further held that authorities were bound to make allotments to oustees first, as per their quota, and then throw open allotments to the public.

Further held that question-3, therefore, is answered by holding that the respondents are entitled to stipulate the extent of the reservation subject to maximum of 50% of the plots in each sector. The extent/percentage of the reservation is qua the total number of plots in a sector and not qua the number of plots floated each time in a sector. The plots in a sector must be allotted to the oustees to the extent of reservation for oustees before allotting the plots to the general public. It follows, therefore, that the balance plots in a sector must also be first allotted to the oustees to the extent of reservation. If there are any unallotted plots in a sector, they would henceforth be first allotted to the oustees to the extent of reservation in their favour and only thereafter be allotted to the general public. The allotments already made cannot be disturbed as that would affect the rights of third parties who are not before us and who understandably would have several defences against unsettling their settled position.

(Para 55)

A Co-sharer in a property acquired will have all the rights of an oustee.

Further held that the rights of the co-owners are therefore now established by the judgment of the Full Bench of this Court in Jarnail Singh's case. The judgment is binding on us. The question, however, that remains is the manner in which these rights can be enforced.

(Para 121)

Further held that once a person establishes his right to be allotted a plot under the oustee quota as a co-sharer, his application must be decided in the same manner in which the application of any other oustee is considered. All the policies and the principles governing any other persons would also apply to co-sharers. For instance, a co-sharer would also be entitled to the benefit of an alternate plot in the next/adjoining plot if he is not allotted a plot in the sector from which his lands were acquired. The co-sharers rights would be determined

based on his individual share. For instance, a co-owner may not loose 75% of his independent holding. In that event he would not be entitled to be allotted a plot under the oustee quota.

(Para 122)

A.M. Punchhi, Advocate with
Anupam Bansal, Advocate
for the petitioners in Civil Writ Petition No. 22252 of 2016.

Puneet Bali, Senior Advocate with
Vaibhav Jain, Advocate, Ranjit Saini, Advocate, Arav Gupta, Advocate and Paramveer Singh, Advocate
for the petitioners in Civil Writ Petition No. 2747 of 2017.

Narender Singh, Advocate with
Satyavir Singh Yadav, Advocate and Saurabh Dalal, Advocate
for the petitioners in Civil Writ Petition No. 5927 of 2017.

B.R.Mahajan, Advocate General, Haryana with
Deepak Balyan, Addl. A.G., Haryana
for the State of Haryana

Deepak Sabharwal, Advocate, Amar Vivek, Advocate,
Shubhra Singh, Advocate and Sourabh Maggu, Advocate
for HUDA

S. J.VAZIFDAR, C. J.

(1) These petitions concern the rights of the parties whose lands have been acquired to the allotment of plots in lieu thereof in addition to the compensation received under the Land Acquisition Act, 1894. The allotment is to an extent on a preferential basis and has come to be referred to as the 'oustee quota'.

(2) Commencing from the year 1987, policies have been introduced by the State of Haryana governing the rights of the oustees to the allotment of plots under the oustee quota. There are several issues with respect to the rights of the oustees, many of which have been the subject matter of decisions of this Court which have attained finality before the Supreme Court. There are, however, several issues relating to the interpretation of the policies and the applicability as well as the interpretation of the judgments and orders of this Court and of the Supreme Court which require consideration. From time to time we clubbed several of these petitions. Instead of disposing of all the petitions, we choose to restrict this judgment to three petitions which

together cover most of the issues that require urgent consideration.

(3) A Division Bench of this Court, of which two of us (S.J.Vazifdar, CJ and Harinder Singh Sidhu, J.) were members, by an order dated 15.09.2017 thought it appropriate that these petitions be decided by a larger Bench on account of the importance of the matter and the large number of matters pending in this Court. Several issues were framed by the Division Bench.

(4) By an administrative order dated 15.09.2017, the Chief Justice constituted this Full Bench for the determination of these issues.

(5) The order of reference raised various questions. However, during the course of the hearing, we modified the questions and allowed the parties to raise certain additional questions. The questions as finalized and answered by us are as follow:-

1. Whether the claims of oustees for allotment of plots under the oustee quota are required to be settled first before offering plots to the general public and other constitutionally permissible reserved categories?

2. Whether the reservation of 10 percent for the oustee quota is based on a valid rational criteria?

3. Whether the number of plots to be reserved for oustees ought to be first allotted to the oustees?

4. Are the authorities bound to offer the oustee the plot under the oustee quota or is the oustee bound to first apply for the same?

5. If the authorities are bound to offer the oustee the plot under the oustee quota are they entitled at their absolute discretion to decide when the offer is to be made to the oustees? If not, when are the authorities bound to make the offer?

6. When is an oustee entitled to be considered for allotment of a plot under the oustee category?

7. What is the right of an oustee who does not exercise his right of allotment when it first accrues or of an oustee who does not get a plot though he applies for it?

8. Is the oustee liable to pay the price fixed for allotment on the date of acquisition of the oustee's land, the date of entitlement for allotment under the oustee quota, the date

of offer of allotment under the oustee quota or the date of exercise of option for allotment under the oustee quota?

9. The basis on which the price is to be quantified/calculated for allotment under the oustee quota?

10. Which policy is applicable to an oustee-the policy in force on the date of entitlement, the date of acquisition, the date of offer the date when the sector is floated or the date of exercise of option?

11. Whether in view of the Policy dated 28.08.1998, a person is entitled to the oustee quota only if his land is acquired for the purposes mentioned therein?

12. Is an oustee who cannot be allotted a plot in the same sector entitled to the allotment of a plot in the next/adjoining sector? What is the concept of next residential sector vis.a.vis. an adjoining sector?

13. What are the rights of co-sharers?

14. Whether the policy of 11.08.2016 or any part thereof is illegal?

(6) As these questions arise in several similar petitions we permitted the counsel in these petitions also to address us although we have restricted this judgment only to the above three petitions. Several other petitions were infact listed for hearing throughout.

(7) The learned counsel for the petitioners invited our attention to several judgments that elaborate upon the need to rehabilitate the oustees i.e. parties whose lands have been acquired under the Land Acquisition Act. These reasons have been reiterated and elaborated upon in several judgments.

(8) It is sufficient to refer to the judgment of the Supreme Court in State of U.P.*versus* Smt. Pista Devi and others[1], which is the first case on the point to which our attention has been invited. The Supreme Court held as under:-

> "**9.** It is, however, argued by the learned counsel for the respondents that many of the persons from whom lands have been acquired are also persons without houses or shop sites and if they are to be thrown out of their land

[1] 1986(4) SCC 251

they would be exposed to serious prejudice. Since the land is being acquired for providing residential accommodation to the people of Meerut those who are being expropriated on account of the acquisition proceedings would also be eligible for some relief at the hands of the Meerut Development Authority. We may at this stage refer to the provision contained in Section 21(2) of the Delhi Development Act, 1957 which reads as follows:

"21. (2) The powers of the Authority or, as the case may be, the local authority concerned with respect to the disposal of land under sub-section 1 shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority or the local authority concerned and are willing to comply with any requirements of the Authority or the local authority concerned as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them:

Provided that where the Authority or the local authority concerned proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority or the local authority concerned may think fit to impose."

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

> will as far as practicable provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in question.
>
> (emphasis supplied)".

(9) The Statement of Objects and Reasons of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are also relevant. It was noted that the previous legislation did not address the issue of rehabilitation and resettlement of the affected persons and the families and that the Land Acquisition Act was proposed to be repealed and to be replaced with adequate provisions for rehabilitation and resettlement. It was proposed to have a unified legislation dealing with acquisition, providing compensation and making adequate provisions for rehabilitation and resettlement of the affected persons and their families. The effect of acquisition on the owners is referred to with considerable emphasis throughout the statement of objects and reasons. The imperative need to recognize rehabilitation and resettlement issues as intrinsic to the development process was stated. It is sufficient to refer to paragraph-7 of the Statement of Objects and Reasons:-

> "**Statement of Objects and Reasons**:-
>
> ……..7. There is an imperative need to recognize rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework, not only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic disadvantages and the social impact arising out of

> displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families."

(10) As we mentioned earlier there are several policies commencing with the policy dated 10.09.1987 and ending with the policy dated 11.08.2016 which is challenged in Civil Writ Petition No. 5927 of 2017.

(11) The learned Advocate General agreed that every policy is not necessarily a fresh self contained policy nullifying the effect of the earlier policies. He agreed with the submission on behalf of the petitioners that each policy would have to be considered in the light of the previous policies. Depending on the nature of the policies, the provisions of each policy would have to be construed to ascertain whether the corresponding provisions in the earlier policy/policies have been retained, modified or nullified. Accordingly he agreed that the earlier policies continued to apply except in so for as they may have been modified or nullified by the subsequent policies.

(12) He, however, contended that each policy would operate only prospectively and not retrospectively. In our view, there can be no blanket observation that every policy or every term of a policy would operate only prospectively. That would depend upon each policy and each of the terms therein. It would be necessary in each case to ascertain whether the particular aspect is prospective or retrospective.

(13) It is necessary to consider at the outset whether the judgment of a Division Bench of this Court in Haryana Urban Development Authority and others versus Sandeep and others [2]has been upheld by the Supreme Court or whether it is open to us to consider the correctness of the judgment. The petitioners contend that the ratio of the judgment in Sandeep's case has not been upheld by the Supreme Court and that it is open to the Full Bench to take a contrary view. The respondents' contend otherwise. The most vital issues before us and a large part of this judgment depend upon the answer to this question. It is, therefore, necessary to deal with it first. In our view the judgment was approved by the Supreme Court and it is not open to us to take a different view.

(14) We will accordingly be repeatedly referring to the judgment of this Court in Sandeep's case on several issues. For the purpose of

[2] 2012(67) R.C.R. (Civil) 691

deciding the question as to whether the judgment has been upheld or not it is not necessary to set out even the ratio of the judgment. It is necessary to refer to the orders of the Supreme Court which in our view have upheld the judgment in Sandeep's case preventing us from considering the correctness of that judgment.

(15) Before the judgment in Sandeep's case, another Division Bench of this Court delivered a judgment in Ved Pal versus State of Haryana and others[3]. The judgments in Sandeep's case and Ved Pal's case were delivered on 25.04.2012 and 18.11.2011 respectively. However, the Supreme Court disposed of the appeal against the judgment in Sandeep's case and thereafter the appeal which challenged the judgment in Ved Pal's case. We will presume that Ved Pal's case took a view contrary to the view taken in Sandeep's case, although the judgment in Sandeep's case refers to the judgment in Ved Pal's case. It is the two orders and judgments of the Supreme Court that decide the issue as to whether Sandeep's case has been approved by the Supreme Court or not. It is essential to read the orders together in view of the contention on behalf of the petitioners that the order of the Supreme Court in Sandeep's case is not a judgment and contains no ratio. It is not necessary for us to consider this submission for the Supreme Court in Ved Pal's case held that it had approved the judgment of this Court in Sandeep's case while disposing of the appeal against the judgment in Sandeep's case.

(16) The appeals against the orders and judgments in Sandeep's case and other connected matters were disposed of by an order and judgment of the Supreme Court dated 06.03.2014. The order reads as under:-

> "The state of Haryana had issued notification under Section 4 of the Land Acquisition Act,1894 (for short, "the Act") and acquired land for development of residential, commercial and institutional Sectors 55 and 56, Gurgaon in the year 1989.
>
> In recognition of the displacement of the oustees a rehabilitation and resettlement policy was framed which was amended from time to time by the Haryana Urban Development Authority (for short, "the HUDA") and the Government of Haryana.

[3] 2013(5) RCR (Civil) 129

> Thereafter, the HUDA advertised and floated scheme for allotment of free hold residential plots to general public in Sector 55 and 56, Gurgaon in the year 1992.
>
> Shri V.K. Bali, learned senior counsel for the petitioner (s) submits that the case of the petitioners for allotment of plots in the quota of rehabilitation/re-settlement policy has not been considered at all.
>
> In the advertisement, the respondent- HUDA had invited applications both from the oustees and from the general public for allotment of plots acquired under different notifications.
>
> The High Court in its judgment and order has specifically observed that the oustees, whose land has been acquired either for residential, commercial, institutional or any other purpose, form a separate and distinct category and are entitled to be considered for allotment of a plot, as a part of rehabilitation process. It has further appeared that while inviting applications for allotment of plots, the HUDA had granted first priority to the oustees and thereafter to the general public/applicants who had filed their applications in the general category.
>
> In view of the above, in our opinion, the contention canvassed by the learned senior counsel for the petitioner(s) does not appeal to us. Therefore, while sustaining the judgment passed by the High Court we dismiss the special leave petition."

(17) Mr. Bali, Mr. Punchi, Mr. Narender Singh, Mr. Sandeep Sharma and Mr. Sanjay Vashisth, Advocates appearing for the petitioners in a group of petitions including Civil Writ Petition Nos. 22252 of 2016, 2747 of 2017, 5927 of 2017, 22018 of 2016 and 24361 of 2016 strongly submitted that this order does not contain any ratio and does not serve as a precedent. As we mentioned above, it is not necessary to analyze this order to determine whether the judgment in Sandeep's case was affirmed by the Supreme Court or not as the Supreme Court once again dealt with it while disposing of the appeal against the order and judgment of this Court in Ved Pal's case. The appeal before the Supreme Court against the judgment in Ved Pal's case was disposed of by an order and judgment dated 12.03.2014. The Supreme Court inter-alia held:-

> "5. The High Court by its common judgment and order had disposed of the writ petitions and further directed the appellant-Development Authority to float a scheme before putting the lands to the general public for allotment of plots and the size as may be available depending upon the oustee policies.
>
> 6. Aggrieved by the directions so issued by the High Court, the Development Authority is before us in these appeals.
>
> 7. We have heard Shri Neeraj Kumar Jain, learned senior counsel appearing for the Development Authority and learned counsel for the respondents/land losers. We have carefully perused the documents on record and the judgment and order(s) of the Courts below.
>
> 8. In our considered view, the direction issued by the High Court runs counter and contrary to the judgment and order passed by the very same Court in the case of Haryana Urban Development Authority and Ors. *versus* Sandeep and Ors. (LPA No. 2096 of 2011) & connected cases, dated 25.04.2012 which decision has been approved by this Court while rejecting the appeals filed by the Development Authority against the said judgment and order in SLP(c) No. 23933 of 2012 and other connected matters by order dated 06.03.2014.
>
> 9. In view of the above, we dispose of the appeals and now direct the appellant-Development Authority to float an allotment scheme for the land losers whose lands have been acquired by the Development Authority for establishment and development of residential area as Sectors 55 and 56, Gurgaon as expeditiously as possible within six months from the date of receipt of copy of this Court's order. While floating the scheme the Development Authority will keep in view the directions issued by the High Court in Sandeep's case *(supra)* as confirmed by us.
>
> 10. With these observations and directions, the appeals are disposed of."
>
> (emphasis supplied)

(18) These two orders and judgments of the Supreme Court when read together establish that the Supreme Court upheld the judgment in Sandeep's case but not the judgment in Ved Pal's case at

least insofar as it is contrary to Sandeep's case. This is especially clear from the judgment dismissing the appeal against the judgment in Ved Pal's case.

(19) Mr. Bali submitted that the orders and judgments of the Supreme Court in Sandeep's case and Ved Pal's case are not precedents, contain no ratio and ought to be totally ignored. He further submitted that these orders of the Supreme Court are per incurrium and are contrary to the judgment of the Supreme Court in Brij Mohan v. Haryana Urban Development Authority[4], and must, therefore, also be ignored by this Court, by the State of Haryana and by the Haryana Urban Development Authority.

(20) Mr. Bali's and Mr. Punchhi's contention on behalf of the petitioners that the observations of the Supreme Court in the above judgments are not ratio and must be ignored altogether is not well founded. The judgments when read together and especially the judgment of the Supreme Court in Ved Pal's case establishes, for more reasons than one, that the Supreme Court upheld the judgment of this Court in Sandeep's case and cannot be ignored by this Court.

(A) In paragraph-7, the Supreme Court observed: "We have carefully perused the documents on record and the judgment and order(s) of the Courts below". To uphold the contention on behalf of the petitioners, we would have to ignore this observation with a finding that the Supreme Court had actually not carefully perused the documents on record and the judgment and orders of this Court. We are, but naturally neither inclined to do so nor entitled to do so.

(B) In paragraph-8, the Supreme Court observed that the Division Bench judgment in Ved Pal's case runs counter and contrary to the judgment and order passed in Sandeep's case. Having said so, the Supreme Court observed that the decision in Sandeep's case had been approved by the Supreme Court while rejecting the appeals filed by the official respondents. The Supreme Court, therefore, itself held in Ved Pal's case that it had approved the decision in Sandeep's case. We cannot ignore this observation or brush it aside as we were invited to. If we were to accept the submission that would amount to our saying that the Supreme Court had not approved the judgment in Sandeep's case which is directly contrary to what the Supreme Court itself said namely that it had approved the judgment in Sandeep's case.

---

[4] (2011) 2 SCC 29

(C) The doubt, if any, is set at rest by the last sentence of paragraph-9 of the judgment of the Supreme Court in Ved Pal's case: "While floating the scheme, the Development Authority will keep in view the directions issued by the High Court in Sandeep's case *(supra)* as confirmed by us". The Supreme Court, therefore, once again stated that it had confirmed the judgment in Sandeep's case. Nothing can be clearer.

(D) Moreover, the authorities were directed to float the scheme keeping in view the directions issued by this Court in Sandeep's case. If the Supreme Court had not affirmed the judgment in Sandeep's case, there would be no question of the Supreme Court directing the official respondents to float the scheme in accordance with the directions issued in Sandeep's case. If we were to re-examine the ratio in Sandeep's case and come to a contrary view and issue directions to the authorities accordingly, they would be contrary to the directions of the Supreme Court. This is a clear answer against the petitioners' contention that we are entitled to take a view contrary to Sandeep's case.

(E) Even thereafter the Supreme Court consistently followed its judgment in Sandeep's case. For instance, the Supreme Court by an order and judgment dated 14.01.2015 in a group of petitions for Special Leave to Appeal, the first of which was SLP No.26147 of 2011 in the case of Haryana Urban Development Authority and others *versus* Krishna, held as follows:-

> "The present special leave petition is directed against the orders passed by a Division Bench of Punjab and Haryana at Chandigarh in LPA No. 897 of 2011, dated 20.05.2011, whereby and whereunder the Division Bench refused to interfere with the order passed by the learned Single Judge issuing certain directions to the petitioner herein, that is Haryana Urban Development Authority,(for short "the HUDA").
>
> By the impugned judgment and order, the Division Bench of the High Court upheld the direction to the HUDA to consider the claim of the respondent herein for the allotment of a plot in accordance with the former's policy.
>
> It has been brought to the notice of this Court that the issues raised in the present special leave petition is covered by another judgment of the High Court of Punjab and Haryana

> as upheld by this Court. Therefore, in our considered opinion, we need not to go into the details of the case. The special leave petition can be disposed of on a very short ground that would satisfy the interest of both the parties.
>
> Accordingly, we dispose of this special leave petition with a direction that if respondent's application is pending for consideration for allotment of a plot under the oustees quota, the same shall be considered by the HUDA in accordance with law and in the light of the judgment and order passed by the High court in the case of the Haryana Urban Development Authority & Ors. *versus* Sandeep & Ors., L.P.A. No. 2096 of 2011 etc., dated 25.04.2012, within eight weeks' time from the date of receipt of copy of this Court's order."
>
> (emphasis supplied).

(21) The question of our considering the correctness of the judgment of the Division Bench of this Court in Sandeep's case, therefore, cannot arise. It would also be contrary to the similar directions of the Supreme Court in its order and judgment dated 14.01.2015 in Haryana Urban Development Authority and others v. Krishna where the Supreme Court issued a specific direction that the application of the respondent therein for allotment shall be considered by HUDA in accordance with law and in the light of the judgment and order passed by the High Court in Sandeep's case.

(22) In our view, therefore, the judgment of the Division Bench of this Court in Sandeep's case was upheld by the Supreme Court. It is not open for us to take a view contrary to the one taken by this Court in Sandeep's case. We are bound by the judgment of this Court in Sandeep's case. Over-ruling the judgment of this Court in Sandeep's case would result in a direct violation and contravention of the orders and judgments of the Supreme Court in Sandeep's case and in Ved Pal's case. It would amount to judicial indiscipline.

(23) In support of his contention that the judgment of the Supreme Court in Ved Pal's case, Sandeep's case and Krishna's case are not precedents, contain no ratio and must be totally ignored, Mr. Bali relied upon the following judgments which we will now deal with.

(24) In State of U.P. and another versus Synthetic and Chemicals

Ltd. and another[5], the Supreme Court held:-

> **"40.** 'Incuria' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd. [(1944) 1 KB 718 : (1944) 2 All ER 293]). Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law. In Jaisri Sahu *versus* Rajdewan Dubey [(1962) 2 SCR 558 : AIR 1962 SC 83] this Court while pointing out the procedure to be followed when conflicting decisions are placed before a bench extracted a passage from Halsbury's Laws of England incorporating one of the exceptions when the decision of an appellate court is not binding.
>
> 41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London)Ltd. *versus* Bremith Ltd. [(1941) 1 KB 675, 677 : (1941) 2 All ER 11] the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi versus Gurnam Kaur. [(1989) 1 SCC 101] The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on

[5] 1991(4) SCC 139

> consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Sharma Rao *versus* Union Territory of Pondicherry [AIR 1967 SC 1480 (1967) 2 SCR 650 : 20 STC 215] it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."
>
> (…emphasis supplied).

(25) In Ved Pal's case, the Supreme Court in paragraph-7 stated "we have carefully perused the documents on record and the judgment and orders of the Courts below". Thus the judgment in turn had referred to the relevant policies, judgments and statutory provisions. It is hardly open then for us to say that although the Supreme Court said that it had carefully perused the documents on record and the judgments and orders of the Courts below, they were infact careless and ignorant of the relevant provisions of the law. Nor is it open to us to ignore the judgment of the Supreme Court on the ground that the judgments of the Supreme Court are sub-silentio or that the points of law were not perceived by the Supreme Court or were not present to its mind. Much less is it open to us to say that the judgments were without application of mind or without any reasons. The judgment, therefore, is of no assistance to the petitioners.

(26) In ICICI Bank and another *versus* Municipal Corporation of Greater Bombay and others[6], it was held that it is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment. In Sandeep's case, however, the questions expressly fell for consideration and in any event were considered in depth. The Supreme Court said that it had considered the same and the matter ends

[6] 2005(4) SCC 404

there. There is no question of this Court testing that statement which is what we were invited to do.

(27) In Jitender Kumar and another *versus* State of Uttar Pradesh and others[7], the Supreme Court held:-

> "53. Even otherwise, merely quoting the isolated observations in a judgment cannot be treated as a precedent dehors the facts and circumstances in which the aforesaid observation was made.
>
> 54. Considering a similar proposition in Union of India versus Dhanwanti Devi [(1996) 6 SCC 44], this court observed as follows: (SCC pp.51-52, para 9)
>
> '9…. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. … A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. … It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. … It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution."
>
> (emphasis supplied)
>
> 55. In State of Orissa versus Mohd. Illiyas [(2006) 1 SCC 275 : 2006 SCC (L&S) 122] the Supreme Court reiterates the law as follows: (SCC p. 282, para 12)
>
> "12. … Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. … A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and

[7] 2010 (3) SCC 119

> not every observation found therein nor what logically flows from the various observations made in the judgment.
>
> The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. … A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament."

(28) We have not relied upon or followed any part of the judgment in Sandeep's case in support of a proposition that logically follows from the observations therein. We have infact followed what is explicitly decided in the judgment.

(29) In Fida Hussain and others *versus* Moradabad Development Authority and another[8], the Supreme Court held:-

> **"21.** It is now well settled that a decision of this Court based on specific facts does not operate as a precedent for future cases. Only the principles of law that emanate from a judgment of this Court, which have aided in reaching a conclusion of the problem, are binding precedents within the meaning of Article 141. However, if the question of law before the Court is the same as in the previous case, the judgment of the Court in the former is binding on the latter, for the reason that the question of law before the Court is already settled. In other words, if the Court determines a certain issue for a certain set of facts, then, that issue stands determined for any other matter on the same set of facts."

(30) It was suggested that the judgments of the Supreme Court ought to be ignored because they do not themselves set out all the facts and the propositions of law. This approach is entirely incorrect. The judgments of the Supreme Court especially in Ved Pal's case and Sandeep's case clearly state that the Supreme Court had considered the judgments, the record and the provisions of the law before confirming the judgment in Sandeep's case. It is not open to us to ignore this judgment merely because the Supreme Court itself did not set out the facts. That would be an act of judicial indiscipline.

(31) We will now consider each of the questions framed as aforesaid.

---

[8] 2011(12) SCC 615

Re: Question No. 1

Q. Whether the claims of oustees for allotment of plots under the oustee quota are required to be settled first before offering plots to the general public and other constitutionally permissible reserved categories?

(32) This question must be answered in the negative against the petitioners and in favour of the respondents in view of the judgment of the Division Bench of this Court in Haryana Urban Development Authority and others *versus* Sandeep and others[9],. The Division Bench held:-

> "**26**. The oustees, whose land has been acquired either for residential, commercial, institutional or any other purpose, form a separate and distinct category and are entitled to be considered for allotment of a plot, as a part of rehabilitation process. It is not disputed by any of the parties that oustees form a well defined category for which the reservation to achieve the larger social objective of rehabilitation is warranted. Therefore, for such category, there could be reservation for plots. A Full Bench of this Court in Jarnail Singh's case *(supra),* while considering question No.1, returned a finding that the policy contemplating the plots for oustees is nothing, but a reservation of plots for such class. Question No.3 formulated therein was; whether certain percentage of plots is required to be reserved for oustees or that the oustees are entitled to preferential allotment of plots first without allotting the same to the general public? It was held that the reservation in respect of the constitutionally permissible classes can be only within the limit of 50% of plots for the reason that reservation in excess of the upper limit contravenes the mandate of Article 14 of the Constitution. The relevant extracts read as under:
>
> > "The question which arises is whether reservation of plots exceeding 50% shall contravene the equality clause contained in Article 14 of the Constitution of India and the concept of maximum reservation to the extent of 50% can be applied in respect of allotment of plots as well.
> >
> > In view of the above, the writ petitions are disposed of with the following orders and directions:

[9] 2012(67) RCR (Civil) 691

1. The oustees, whose land is compulsorily acquired for a public purpose, form a class in itself, having a rational basis with the object of resettlement;

4. However, the oustees, as a class in themselves, would be entitled to reservation of plots to such an extent as the State Government may deem appropriate;

5. That the State Government shall be at liberty to reframe policy for reservation of plots to constitutionally permissible classes and within limit of 50% of plots; and"

28. In view of the aforesaid decisions and the fact that none of the learned counsel for the parties disputed such principle of law in respect of upper limit on reservations, the plots for the oustees including all other constitutionally permissible classes of reservation cannot exceed 50%.

Question No.3. Whether, the release of land from acquisition so as to dis-entitle an oustee from allotment of a plot, means release of land in terms of Section 48 of the Act or includes the non publication of the declaration under Section 6 of the Act as well?

48. In view of the principles laid down, we find that the procedure to invite an application for allotment of plot before the flotation of a sector is only directory provision. When the HUDA invited applications from the general public along with the applications from the oustees, it substantially complies with the conditions in the policies framed by it. The requirement of allotment of plots to the oustees prior to the floatation of sector is for the purpose that the claims of the oustees have to be accepted in priority over the claim of the general public. In terms of the decision on question No.2, referred to above, the oustees form a distinct and separate category and are entitled to reservation. Such reservation can be given effect to, when the plots available in a sector are determined and the percentage of reservation of each category is fixed. Having done so, the HUDA is required to invite applications, may be separately for each

category or may be through one advertisement inviting applications from each category. It is a matter of convenience to invite applications through one advertisement from all eligible applicants, may be the general category and from one or more reserved categories. One advertisement would facilitate the disposal of plots in expeditious manner, whereas the different advertisements for each category will only delay the process of allotment of plots. In fact, the public advertisement is the best mode to invite applications from the separate and distinct category including from the oustees, as it avoids the dispute regarding receipt of the notice or otherwise an argument that they were not made aware of the plot being available, as part of the rehabilitation process. Such process provides opportunity to all the similarly situated oust4es to apply for the plots. It provides for equal opportunity to all. Thus, we are not inclined to accept the argument that condition in the R & R policies to seek applications from the oustees before the floatation of the sector is mandatory. In fact, the argument of learned counsel for the appellant that the policy for rehabilitation by way of allotment of plots to the oustees is in two parts is more acceptable. The mandatory provision is the right of consideration for allotment of plots. The condition of inviting applications before the floatation of a sector is a directory provision, as it relates to procedure of allotment of plots.

56. Thus, the present appeal as well as the other connected matters are disposed of with the following directions, in addition to the decision on the questions of law discussed above:

iii) That the HUDA or such other authority can reserve plots up to 50% of the total plots available for all reserved categories including that of oustees. As to what extent there would be reservation for the oustees, is required to be decided by the State Government and/or by HUDA or any other authority, who is entitled to acquire land."

(emphasis supplied)

(33) These observations conclude the matter on the issue of reservation. In view of this judgment the respondents are not entitled to reserve more than 50% of the plots available and proposed to be allotted in favour of all reserved categories including the oustee(s).

(34) It was submitted that paragraph-28 of the judgment establishes that the judgment on this issue was on a concession and, therefore, it is open to us to question the correctness of the judgment on the issue of reservation. The submission is not well founded.

(35) Firstly, the above observations were not on a concession. In any event they were not based merely on a concession. The opening words "In view of the aforesaid decisions……" militate against the submission that the judgment was based only on a concession. The decision of the Division Bench on the issue of reservation was based on the decisions of the Full Bench of this Court in Jarnail Singh and others versus State of Punjab and others. The second part of paragraph-28 of the judgment to the effect [10]that none of the learned counsel for the parties disputed such principles of law in respect of the upper limit of reservation was, therefore, not the only basis for the judgment. Moreover, whatever be the case the Supreme Court by its orders and judgments in Sandeep's case, Ved Pal's case and Krishna's case approved the decision of this Court in Sandeep's case and directed the authority to act in accordance therewith. It is not open, therefore, for us to ignore these judgments of the Supreme Court on the ground that paragraph-28 records a concession of the counsel.

(36) It was then contended that the ratio in Sandeep's case and in particular the ratio contained in paragraph-48 thereof is contrary to the judgment of the Supreme Court in Brij Mohan versus Haryana Urban Development Authority[11]and in particular paragraphs-22 and 23 thereof. It was submitted that therefore, even if the judgment of this Court in Sandeep's case was upheld by the Supreme Court in Sandeep's case and in Ved Pal's case, the judgments of the Supreme Court are also per incurrium. Paragraphs 22 and 23 of the judgment in Brij Mohan's case read as under:-

> "**22.** The policy clearly states that "claims of the oustees shall be invited before the sector is floated for sale". This is also reiterated in the subsequent scheme dated 19-3-1992 which provides that "claims of the oustees for allotment of

[10] AIR 2011 (Pb) 58

[11] 2011(2) S.C.C. 29

> plots under this policy shall be invited by the Estate Officer, HUDA concerned, before the sector is floated for sale". It is therefore evident that the landloser applicants for allotment should be given the option to buy first, before the applications for allotment are invited from the general public. This means that the prices to be charged will be the rate which is equal to the rate that is fixed when the sector was first floated for allotment. In this case, it is not in doubt that when the sector was floated for sale, the rate that was fixed in regard to plots of 300 sq m or less, was `1032 per square metre (`863 per square yard).
>
> 23. The appellants had made the applications in 1990 and approached the High Court in 1992. There was even a direction by the High Court to consider their applications within a fixed time. The appellants should therefore be allotted plots under the scheme at the initial price at which the layouts/sector plots were first offered for sale after the acquisition. Merely because HUDA delayed the allotment in spite of the applications of the appellants and the order of the High Court, and made the allotments only after a contempt petition was filed, does not mean that the appellants become liable to pay the allotment price prevailing as on the date of allotment. Having regard to the terms of the scheme which clearly requires that the landlosers shall be invited to apply for allotment before the sector is floated for sale, it is clear that the initial price alone should be applied provided the landlosers had applied for allotment at that time. In this case such applications were in fact made by the appellants. We are therefore of the view that the respondents could charge for the allotted plots only the rate of `1032 per square meter (or `863 per square yard) and not the rate as revised in 1993, namely `1122 per square yard."

(37) Relying upon these observations it was submitted on behalf of the petitioners that Sandeep's case is contrary to the judgment of the Supreme Court in Brij Mohan's case and is, therefore, per incurrium in so far as it is held in Sandeep's case that HUDA can provide a maximum reservation of 50% including for oustee(s).

(38) The submission is not well founded. Firstly the issue of reservation directly arose and was dealt with in Sandeep's case. If we were to uphold this contention we would in effect be holding that the

judgments of the Supreme Court in Sandeep's case and in Ved Pal's case are per-incurrium in view of the judgment in Brij Mohan's case. The question of reservation was neither raised before nor dealt with in Brij Mohan's case. It was, however, contended that the observations in Brij Mohan's case imply that there cannot be any cap on reservation for the oustees. We cannot do so. The issue of reservation was specifically addressed in Sandeep's case and it is not open for us to say that the judgment of the Supreme Court is impliedly per-incurrium.

(39) In any event, the judgments of the Supreme Court in Sandeep's case, Ved Pal's case and Krishna's case can be reconciled with the judgment in Brij Mohan's case. There is no inconsistency between these cases. Sandeep's case expressly dealt with the issue as to whether or not all the available plots must mandatorily be allotted to the oustees first or whether the reservation including in favour of the oustees cannot exceed 50% of the available plots. In Brij Mohan's case the Supreme Court interpreted the 19.03.1992 policy to the effect that the claims of the oustees shall be invited before the sector is floated for sale. Brij Mohan's case only dealt with the issue as to when the claims of the oustees are to be invited and held that they must be invited before the sector is floated for sale. The Supreme Court did not decide the issue of the oustee's quota at the time the sector is floated for sale. As we will explain in detail while answering question 3, the effect of Brij Mohan's case is that the oustees within the quota reserved for them in a sector must be allotted the plots when floated first and only thereafter can the plots be allotted to others.

(40) We are, therefore, not inclined to hold that the judgment of this Court in Sandeep's case and the judgments of the Supreme Court in Sandeep's case, Ved Pal's case and Krishna's case are per-incurrium in view of the judgment of the Supreme Court in Brij Mohan's case.

(41) It was then submitted on behalf of the petitioners that in any event the respondents are bound to reserve at least 20% of the plots for the oustees in view of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. He relied upon the Statement of Objects and Reasons of the Act and the provisions of Section 31(1) (2) (c) and (d) and Section 38(2) thereof and entry (iii) of the second schedule thereto.

(42) It was submitted that with effect from the date on which the Act came into force there must be a reservation of at least 20% for the oustees. The reservation of only 10% under the present policy is, therefore, contrary to these provisions.

(43) Even assuming that the submission is well founded it would make no difference so far as the petitioners before us are concerned. The above provisions do not operate retrospectively but prospectively. The Act came into force on 01.01.2014 and these provisions, therefore, would only apply to acquisitions after 01.01.2014. It was confirmed by all the learned counsel appearing on behalf of both the sides that none of the cases before us pertain to the period after 01.01.2014. It is, therefore, not necessary for us to decide this issue. The issue is kept open.

Re: Question No.2:

Whether the reservation of 10 percent for the oustee quota is based on a valid rational criteria?

(44) The question does not admit of any difficulty. Once it is held that the respondents are entitled to reserve only upto a maximum of 50% of the plots including towards the oustee quota, the extent of reservation is a matter of policy which must be left at least in the first instance to the respondents. The respondents are entitled to determine the policy in this regard. It is not for the Court to decide the extent of the reservation. So long as the reservation is fixed on a rational criteria, the Court ought not to substitute its view for that of the policy maker.

(45) The Administrator of HUDA has filed an affidavit justifying the extent of reservation for the oustees. The affidavit inter-alia states as follows: There are already existing reservations ranging from 27% to 69% in different sizes of plots. A certain number of plots are required to be provided for NRIs and for persons who have distinguished themselves in the field of science, technology, art, culture, social service, judiciary, sports, defence and domiciles of Haryana. The extent of reservation, therefore, required modification. After the decision in Sandeep's case, the plots were reserved under the oustee's quota as well. After considering the competing demands, HUDA has reserved for oustees 10% of 8 marlas plots and 12% of plots above 8 marlas. The decision was taken after a detailed consideration of the data collected by the HUDA. We are unable to say that the decision was not an informed one. It is not for the Court to interfere with the extent of reservation unless it can be said that the extent of reservation was not based on valid criteria.

(46) The submission that the extent of reservation is not based on any rational criteria is not well founded.

(47) At the time of pronouncing the judgment, a further aspect

was sought to be raised. The oustees are entitled to plots of different sizes. The grievance is that the respondents seldom make a reservation under the oustee quota with respect to the plots of smaller sizes. The number of plots of a given size to be reserved under the oustee quota is a matter of policy which must be left to the respondents. There are various factors which the respondents would have to take into consideration while undertaking this exercise. The distribution, however, must be fair and based on rational criteria. Unless the distribution is arbitrary or mala fide, the Court ought not to interfere with the same.

Re: Question No. 3

Whether the number of plots to be reserved for oustees ought to be first allotted to the oustees?

(48) While dealing with question No.3, we held that the judgment of the Division Bench of this Court in Sandeep's case is binding on us in view of the judgment of the Supreme Court in Sandeep's case, Ved Pal's case and Krishna's case. It follows, therefore, that the respondents were not bound to first allot the plots only to all the oustees and thereafter invite applications from the general public. It was held by the Division Bench that there could be a maximum reservation of 50% including for the oustees. The Division Bench did not prescribe a minimum reservation. It follows, therefore, that the respondents were entitled to reserve plots only to a certain percentage not exceeding 50% including for the oustee quota. The question now is whether in a sector the plots reserved for oustees ought to be allotted before the allotment of plots to the others. This in turn raises the question whether the percentage of plots reserved for oustees is qua the total number of plots available in the sector or qua the total number of plots floated each time.

(49) In our view, the percentage must be in relation to the total number of plots available in the sector and these plots must first be allotted to the oustees. Thus, if in a given sector, as on the date the remaining plots are only equal to or less than the total number of plots reserved for oustees, they must be allotted to the oustees and not to the general category.

(50) This view does not militate against the judgment in Sandeep's case. Infact a view to the contrary would militate against the judgment of this Court in Sandeep's case and of the Supreme Court in Brij Mohan's case.

(51) The extent of reservation is in respect of each sector. This has been so held by this Court in Sandeep's case. In paragraph-24 it has been observed that it was not disputed by the counsel for all the parties that the oustees form a distinct class and as a class are entitled to reservation of plots not exceeding 50% of the plots in each sector. Further, in Brij Mohan's case, the Supreme Court held as under:-

> "**22.** The policy clearly states that "claims of the oustees shall be invited before the sector is floated for sale". This is also reiterated in the subsequent scheme dated 19-3-1992 which provides that "claims of the oustees for allotment of plots under this policy shall be invited by the Estate Officer, HUDA concerned, before the sector is floated for sale". It is therefore evident that the landloser applicants for allotment should be given the option to buy first, before the applications for allotment are invited from the general public. This means that the prices to be charged will be the rate which is equal to the rate that is fixed when the sector was first floated for allotment. In this case, it is not in doubt that when the sector was floated for sale, the rate that was fixed in regard to plots of 300 sq m or less, was `1032 per square metre (`863 per square yard)."
>
> (emphasis supplied).

(52) We held earlier that these observations did not militate against the ratio of this Court in Sandeep's case that the reservation including in favour of the oustees cannot exceed 50% of the plots in each sector. In view of the judgment in Brij Mohan's case it must be held that to the extent of the permissible reservation in favour of the oustees, the claims of the oustees shall be invited before the sector is floated for sale. A view to the contrary would militate against the above ratio in Brij Mohan's case. Thus, to the extent of the permissible reservation, the respondents are bound to first allot the plots to the oustees.

(53) Let us illustrate this. If in a given sector there are 1000 plots and the respondents provide a reservation of 10% to the oustees for the entire sector, the oustees would be entitled to 100 plots. The respondents may not float all 1000 plots at one time. If for instance they float 100 plots in the first instance, the same must be allotted first towards the oustee quota and not to the general category. This view reconciles the view taken in Sandeep's case as affirmed by the Supreme

Court and the view taken by the Supreme Court in Brij Mohan's case.

(54) Although that is not the basis of our decision we cannot help observing that this view would encourage the HUDA to complete the development of a sector expeditiously and allocate the oustee quota also expeditiously.

(55) Question-3, therefore, is answered by holding that the respondents are entitled to stipulate the extent of the reservation subject to maximum of 50% of the plots in each sector. The extent/percentage of the reservation is qua the total number of plots in a sector and not qua the number of plots floated each time in a sector. The plots in a sector must be allotted to the oustees to the extent of reservation for oustees before allotting the plots to the general public. It follows, therefore, that the balance plots in a sector must also be first allotted to the oustees to the extent of reservation. If there are any unallotted plots in a sector, they would henceforth be first allotted to the oustees to the extent of reservation in their favour and only thereafter be allotted to the general public. The allotments already made cannot be disturbed as that would affect the rights of third parties who are not before us and who understandably would have several defences against unsettling their settled position

Re: Question No.4

Are the authorities bound to offer the oustee the plot under the oustee quota or is the oustee bound to first apply for the same?

(56) It is rightly agreed that this issue is covered in favour of the petitioners by the judgment of a Division Bench of this Court in Dharampal v. State of Haryana and others[12], where it was held:-

> "**4.** The policy instructions dated 12.3.1993 further envisage that the claim of the oustees are required to be invited through press/newspaper for allotment of plots much before flotation of the sector. Even the past claims of the oustees are required to be scrutinised by a committee in terms of the policy which was applicable at the relevant time and a time frame of four months has been fixed. Thereafter, mode of allotment has also been described which is required to be undertaken much before the other allotments of general category who are to be considered in the draw of lots.

[12] 2006(3) RCR (Civil) 5

Clause (vi) which deals with mode of allotment reads as under:

"(vi) Mode of allotment

After the claims have been finally accepted by the competent Authority, the applicant's claims will be kept in a live register and applicants shall be asked to deposit the earnest money equivalent to 10% of the cost of the plot as and when sector scheme is to be floated. The allotment of plots to such claimants shall normally be done prior to or at least along with other applicants who have been declared successful in the draw of lots after the flotation of the scheme. By doing so, the number of plots, which are to be offered in general draw will be identified after the claims of the oustees have been scrutinized / accepted and the residual plots are earmarked for the general draw. Those allottees who do not prefer their claims within the stipulated period along with requisite information will have no right for consideration of their claims after the general draw is over in respect of that sector."

(emphasis supplied)"

(57) However, the claims of the oustees are required to be invited through press/newspapers and not by individual notices to the oustees personally. Moreover, upon such a development being published/issued it is for the oustee to make an application for the allotment of a plot under the oustee quota. The duty/obligation of respondents will be there only if an application is made by the oustee. An oustee may not be interested in acquiring a plot. In that case he cannot be forced to acquire one.

Re: Question No. 5

If the authorities are bound to offer the oustee the plot under the oustee quota are they entitled at their absolute discretion to decide when the offer is to be made to the oustees? If not, when are the authorities bound to make the offer?

(58) Laying down the principles is relatively easy, applying it would be difficult. It would, to use the hackneyed but useful phrase, depend upon the facts and circumstances of each case.

(59) The purpose and the need for an oustee quota has been dealt

with in several judgments over the years. The purpose of the oustees policy would not be met unless the authorities offer the oustees plots under the oustee quota within a reasonable time. We understand that the development of sectors is a matter of enormous complexity involving an interplay of numerous factors. The authorities must for instance assess financial considerations and the market demand and requirement for the lands. The respondents would also have to prioritize the competing demands upon them. If mala fides are established, a writ to compel the respondents to develop a sector and to allocate the oustee quota, may lie.There cannot be a straight jacket formula in this regard.

Re: Question No. (6)

When is an oustee entitled to be considered for allotment of a plot under the oustee category?

(60) The right to be allotted a plot under the oustee quota accrues when the notice under section 4 of the Land Acquisition Act is issued. The terms and conditions of allotment and the applicable policy are different matters. This, however, is provided the matter ultimately results in the acquisition of the property and would be subject to the extent of the property ultimately acquired. If the property is not finally acquired for any reason such as on account of its not being notified under section 6 or being released under section 48 or a challenge to the acquisition being upheld, the entitlement under the oustee quota would not arise. A person cannot possibly have the benefit of retaining his property and availing an allotment under the oustee quota. The entitlement and the extent of the entitlement would also depend on the extent of the property finally acquired. Mr. Punchhi, the learned counsel appearing on behalf of the petitioners in Civil Writ Petition No. 22252 of 2016 submitted that an oustee is entitled to be considered for allotment of a plot under the oustee quota when a sector, or adjoining or the next residential sector is first floated for allotment. (We will refer to the relevance of the adjoining or next sector later. For convenience we will use the composite expression sector concerned). The submission is supported by the policies issued from time to time and by the judgments of the Supreme Court and of this Court which we will now refer to.

> 45.(A) To remove all the ambiguities in the instructions issued by an office memo dated 10.09.1987, the Chief Administrator, HUDA issued directions/instructions dated 09.05.1990 to all the Administrators, Estate Officers,

Assistant Estate Officers of HUDA. After noting six points the letter concludes as follows:-

"Subject: Allotment of residential plots commercial sites to the oustees in the various Urban Estates set up by HUDA.

1 to 6. xx xx xx

"As regards allotment of commercial sites to the oustees the matter is under re-examination and the decision as and when arrived at would be communicated. Claims of the oustees shall be invited before the sector is floated for sale.

(emphasis supplied).

Hence, once an oustee is found to be entitled to the allotment of a plot under the oustee quota, he is liable to be considered for allotment when the sector concerned is first floated for allotment.

(B) The Chief Administrator by further instructions/directions dated 18.03.1992 addressed to the officers of HUDA stated that HUDA at a meeting held on 20.02.1992 under the chairmanship of Chief Minister, Haryana had decided that the plots to the oustees would be offered only if the oustees were owners of the land proposed to be acquired on the terms and conditions mentioned therein. Clause-VI reads as under:-

"(VI) Claims of the oustees for allotment of plots under this policy shall be invited by the Estate Officer, Haryana Urban Development Authority concerned before the Sector is floated for sale."

This would obviously mean that the oustee(s) right to be considered for allotment under the oustee quota arises when the sector concerned is first floated for allotment after the oustee becomes entitled to be considered for allotment of the plot.

(C) The Chief Administrator of HUDA by instructions / directions dated 12.03.1993 issued to the other officers partially modified the earlier instructions. A copy of the procedure approved at a meeting held on 29.01.1993 was attached as Annexure-A. Clauses (i) and (vi) of Annexure-A read as under:-

"Procedure for inviting scrutinizing, deciding of clames and mode of allotment to oustees.

ANNEXURE 'A'

(i) **Filing of Claims**

LAO concerned will prepare a list of eligible oustees at the time of announcement of award and send the same to the Estate Officer for reference and record. The Estate Officer concerned shall invite the claims through press/Newspapers for allotment of plots under the oustees policy much before floatation of the sector. Each applicant would be required to send the application in the prescribed proforma, alongwith the supporting documents and earnest money equivalent to 10% of the cost of the plot of the sector in question and if the price has not been determined till then, of the previous sector floated in the same urban estate.

(vi) **Mode of Allotment**

After the claims have been finally accepted by the Competent Authority the applicant's claims will be kept in live register and applicant shall be asked to deposit the earnest money equivalent to 10% of the cost of the plot as and when sector scheme is to be floated. The allotment of plots to such claims shall normally be done prior to or atleast alongwith other applicants, who have been declared successful in the draw of lots after the floatation of the scheme. By doing so, the number of plots, which are to be offered in general draw will be identified after the claims of the oustees are earmarked for the general draw. Those allottees who do not prefer their claims within the stipulated period alongwith requisite information will have no right for consideration of their claims after the general draw is over in respect of that sector."

(emphasis supplied).

(61) These instructions and the procedure prescribed thereunder do not alter the position at all. They in fact reiterate it. The subsequent instructions/directions dated 29.08.1998 and 27.03.2000 were only in modification of the earlier instructions/directions which did not alter the above position.

(62) This is also in conformity with the judgment in Brij Mohan

versus Haryana Urban Development Authority and another[13]. The relevant observations have already been set out.

(63) In the result, therefore, an oustee is entitled to be considered for allotment of a plot under the oustee category when the sector or the adjoining or the next residential sector is first floated for allotment. This would obviously be when the sector is first floated for allotment after the oustee becomes entitled to be considered for allotment. Thus after the oustee becomes entitled to be considered for allotment he can apply for the allotment of a plot under the oustee quota. If he does not get a plot for any reason he can apply again and again for the allotment of a plot in the oustee quota when the sectors concerned are floated till he is finally allotted a plot.

(64) However, oustees whose lands were acquired prior to 10.09.1987, would be entitled to plots only from the sectors in which their lands were acquired. A Division Bench of this Court in Smt. Suman Aneja versus State of Haryana[14] held:-

> "8. We have considered the arguments of the learned counsel for the parties and find that the extreme stand taken by the contesting parties is not warranted by the documents placed on record. Under the policy dated September 10, 1987, it has been provided that those persons whose lands had been acquired, were entitled to be treated as oustees so that they could be accommodated by giving them plots on reserved price. In this policy, it was stated that Hon'ble Supreme Court had decided that the land should be allotted for a house or shop to those persons whose lands had been acquired and it was the legal obligation of the respondents to take steps in that direction. While referring to commercial sites/buildings, it was clarified that the cases of the oustees could be considered for allotment on reserved price as and when the auction for the same was held and it was further stipulated that when these sites/ buildings are put to auction, oustees who wished to purchase them, could respresent before-hand for allotment so that the requisite number could be reserved for them. Vide memo No.A-11-P-90-9721, dated May 9, 1990, certain clarifications were made in the policy dated September 10, 1987 and it was provided that

[13] 2011(2) SCC 29

[14] 1993 (3) PLR 377

"the claims of the oustees shall be invited before the sector is floated for sale." This matter was reiterated vide communication No.A-11-P-91/5678, dated March 18, 1991 in which it was once again reiterated that "the claim of the oustees shall be invited before the sector is floated for sale." From a reading of the aforesaid instructions, particularly the portions quoted above, it is apparent that the date fixed by the respondents themselves in determining the eligibility of the oustees was the date on which the sectors were floated for sale, as it would, indeed, be cruel to a person whose land had been acquried prior to September 10, 1987 but not utilized or disposed of after due development prior to that date to be told that he was not eligible for allotment as an oustee although the land was still available. It is to be noted that the purpose underlying the Rehabilitation Scheme for oustees is basically one involving an obligation on the State to take care of a touching human problem, and if it is at all possible to lean, we must lean on the side of the hapless individual whose land has been acquired. It would be anomalous to hold that while acquiring the land for the purpose of land development to provide houses and other facilities to one section of the populace, those persons whose land had been acquired, should be adversely treated or left homeless and without shelter. We are not unmindful for the fact that to consider the policy dated 10-9-1987 as being retrospective would be to stultify and frustrate land development for years to come as in such a situation, a very large number of persons would now come forward claiming a right to the allotment of plot as oustees but we are of the view that if in pursuance of a development scheme, some land has been acquired but not yet utilised, the oustees from that land should have a prior right to be rehabilitated and that the date fixed for the purpose is the date on which the sector is floated for sale. In other words, if the sector is floated for sale prior to 10-9-1987 and the plots etc., have not been disposed off, the oustees from this land would come within the provision of the scheme. Reliance of the petitioner's counsel on S. B. Kishore's case *(supra)* is however misplaced. In that case, there was a policy for rehabilitation of oustees but the litigant oustee did not make any application within the time fixed for allotment of plots.

> The Supreme Court in the facts and circumstances of that case and while observing that the case was not to be cited as a precedent, allowed the claim of the individual after condoning the delay in the making of the application. In view of what has been held above the judgments cited by Mr. Sibbal need not be dealt with."
> (emphasis supplied).

(The date May 9, 1991 appears to be a typographical error, the correct date being May 9, 1990).

Re: Question No. 7

What is the right of an oustee who does not exercise his right of allotment when it first accrues or of an oustee who does not get a plot though he applies for it?

(65) Questions-5 and 6 raised in Sandeep's case and the answer of the Division Bench of this Court thereto are as follow:-

> **"Question No.5.** Whether the failure to apply for a plot in response to advertisement published at one stage entitles a oustees to apply for allotment of a plot as and when the advertisements are issued subsequently till such time the plots are available within overall limit of 50% of the total plots in a sector?
>
> 49. Since the oustees form a separate and distinct category, failure to apply in response to an advertisement will not dis-entitle an oustee from submitting application at a subsequent stage as and when advertisement is again issued inviting applications for allotment of plots. The failure to apply in response to one or more advertisements does not deprive the oustees of their rights of rehabilitation or their status as that of an oustee.
>
> The advertisements inviting applications for allotment of plots are to be issued after determining the plots available in each sector for reserved categories including that of oustees. HUDA is expected to invite applications in respect of such plots in each sector. Therefore, the failure to apply in response to an advertisement at one stage will not dis-entitle an oustee to apply for a plot at a subsequent stage.

Question No.6. Whether an oustee can be permitted to raise a grievance in respect of non-allotment of a plot on failure to apply for a plot in pursuance of public advertisement issued for the reason of delay and laches?

50. We do not find any merit in the argument raised by Mr. Jain that there can be any delay and laches, if an application is not made for allotment of plot in pursuance of public advertisement issued at one stage or the other. An oustee, whose land has been acquired, does not lose his status as that of an oustee merely for the reason that he has not applied for a plot at an earlier stage. He has a right to seek allotment of a plot as a separate and distinct category as and when advertisements are issued inviting applications from the eligible applicants including the oustees."

(66) Thus an oustee who is not allotted a plot although, he applied for it, does not lose his entitlement to be considered for the allotment of a plot in future under the same category. Even if an oustee does not apply in response to the advertisement, he is not disentitled from submitting an application for the allotment of a plot under the oustee category subsequently. The price at which the allotment is to be made will be dealt with next.

Re: Question No. 8

Is the oustee liable to pay the price fixed for allotment on the date of acquisition of the oustee's land, the date of entitlement for allotment under the oustee quota, the date of offer of allotment under the oustee quota or the date of exercise of option for allotment under the oustee quota?

(67) Mr. Punchhi submitted that the price is the price prevalent when the sector in which the oustee's land was acquired was first floated for allotment. He further submitted that if the land was not floated for residential purpose, the price at which the next sector was floated nearest in point of time and location must be the applicable price. The submission is not well founded. It is contrary to the judgment of this Court in Sandeep's case.

(68) The answer to this question lies in the last sentence of paragraph-53 of the judgment of this Court in Sandeep's case. Paragraph- 53 reads as under:-

> "53. In respect of second question i.e. what is the meaning of the words "normal allotment rate", the Court found that as a matter of fact the land-loser has made an application in the year 1990 for allotment of plot. A direction was issued by the Court in the year 1992, but the HUDA delayed allotment to the appellants.
>
> Therefore, the rate for which plots were initially offered was ordered to be charged. The said question has been answered keeping in view the facts of the aforesaid case, wherein application was submitted by an oustee, but still plot was not allotted to him. The said judgment does not lay down that the 'normal allotment rate' in all circumstances shall be the date when the sector is first floated for sale. As a matter of fact, the normal allotment rate would be the rate advertised by the HUDA in pursuance of which applications are invited from the general public and the oustees, in pursuance of which the plots are allotted."
>
> (emphasis supplied).

(69) Paragraph-53 and in particular the last sentence thereof stipulates that the normal allotment rate would be the rate advertised by the HUDA in pursuance of which the applications are invited from the general public and the oustees, in pursuance of which the plots are allotted. Thus, the allotment rate would be the rate advertised while inviting applications from the oustees and in pursuance of which the plots are actually allotted. Thus, it is not merely the rate advertised by the HUDA while inviting the applications from the general public and the oustees which constitutes the normal allotment rate. There must be an actual allotment pursuant thereto. In other words, it is only when pursuant to the application for allotment, a plot is actually allotted, that the normal allotment rate can be fixed and that rate would be the rate stipulated in the advertisement inviting the said application. Thus two requirements must be met. Firstly, there must be an advertisement by HUDA inviting applications from the general public and the oustees for allotment. Secondly, the oustee must be allotted a plot pursuant to an application as per such advertisement. If these two requirements are met, the normal allotment rate would be the rate stipulated in such advertisement.

(70) This is in consonance with paragraph-56(v) of the judgment of this Court in Sandeep's case which reads as follow:-

> "**56**. Thus, the present appeal as well as the other connected matters are disposed of with the following directions, in addition to the decision on the questions of law discussed above:
>
> (i) to (iii) xx xx xx
>
> (v) That the price to be charged from an allottee shall be the price mentioned in the public advertisement in pursuance of which, the plot is allotted and not when the sector is floated for sale for the first time;

(71) Paragraph-56(v) puts the matter beyond doubt and sets at rest any controversy as regards the interpretation of paragraph-53 and in particular the last sentence thereof.

(72) The learned counsel appearing on behalf of the petitioners, however, submitted that the first part of the last sentence, namely, the words: "As a matter of fact, the normal allotment rate would be the rate advertised by the HUDA in pursuance of which applications are invited from the general public and the oustees……" is correct and in consonance with the judgment of the Supreme Court in Brij Mohan's case and in particular paragraph-22 thereof which we set out earlier. They, however, contend that the concluding words in that sentence, namely, "…….in pursuance of which the plots are allotted" are contrary to the judgment in Brij Mohan's case and the judgment to that extent ought to be overruled by us.

(73) We are not inclined to do so as the judgment has been approved by the Supreme Court.

(74) The words in paragraph-53 "in pursuance of which the plots are allotted" were obviously in recognition of the findings that there cannot be a reservation of more than 50% including for the oustees. If all the oustees' claims were to be satisfied first, it would not have been necessary for the Division Bench to add this caveat. The Division Bench recognized the fact that the plots under the oustee quota may be allotted at a later stage or stages.

(75) Had we upheld the contention on behalf of the petitioners that the price must be that which was stipulated on the first floatation of the sector in which an oustee would have been entitled to the allotment under the oustee quota, we would have balanced the equities by compelling the oustees to pay interest on such price from the date of such first floatation upto the date of payment in respect of the actual

alloltment. Otherwise, it would confer a windfall upon the oustees who would have been entitled to obtain a plot at a price prevalent several years earlier. We appreciate that even that approach would require further adjustments for such oustees would in turn be entitled to contend that they were deprived the use of the plots during the period for which they are compelled to pay interest. It is not necessary, however, to dilate further on this aspect as we find ourselves bound by the judgment in Sandeep's case.

(76) This judgment was followed by a judgment of a Division Bench of this Court dated 26.08.2014 in Civil Writ Petition No.9969 of 2013 Raghbir Singh v. Haryana Urban Development Authority and others. Another Division Bench of this Court by an order and judgment dated 18.09.2002 in Civil Writ Petition No.13548 of 2001 Bhag Singh and others v. Haryana Urban Development Authority and others held:-

> "The only contention raised by Shri Rupinder Khosla, counsel for the petitioners, is that the petitioners are eligible and entitled to be allotted a plot in Sector 21, Part-I, Panchkula or in any other Sector in the said Urban Estate at the initial rate on which the plots were initially allotted when Sector 21 was floated. The allotment of plot at the prevalent rate and asking for deposit of 10% earnest amount of the price of the plot prevalent as on 18.6.2000 is totally arbitrary and illegal. We find no substance in the contention of the counsel for the petitioners. Admittedly, for the first time, the policy for allotment of plots to the oustees was framed on 10.9.1987. The petitioners are not covered by the said policy, as their land was acquired prior to the said policy. Subsequently, in view of the decision dated 11.8.1993 rendered in CWP No.14708 of 1990, reported as Smt. Suman Aneja *versus* State of Haryana and others, AIR 1994 P & H 56, a new policy for those oustees whose land was acquired prior to the year 1987, was framed modifying the earlier policy regarding allotment of plots to the oustees of the acquired land. According to this policy, it was decided that where the land was acquired prior to 10.9.1987, on which a residential Sector had been floated and the plots are still available in that Sector, the oustees claim shall be invited and they will have the prior right for allotment of plots. In this policy, there is nothing which provides that such oustees will be allotted the plots on the initial price

when the Sector was floated. Vide this policy, only a prior right to allot the left-over plots from those Sector has been given to the oustees of the acquired land, but for allotment of plot under this policy, they have to pay the prevalent marked price which has been fixed for allotment to the general public. Only the priority has been given to the oustees but they have to pay the prevalent rate which has been fixed for allotment of these left-over plots. There is no illegality and arbitrariness in the said policy. Rather, it will be unjust enrichment of the petitioners if they are allotted the plots at the rate prevalent in the year 1987. The respondents have spent a lot of money for development of the roads, parks and other facilities for the Sector. The petitioners filed the applications in the year 2000, after framing of the new policy. Their applications were duly considered and the same were rejected because they did not pay 10% of the earnest money, as per the advertisement dated 21.8.2000. They have no legal right to claim allotment of the plots on the price prevalent in the year 1987. Allotting of plots on the said price will rather amount to giving undue benefits to the petitioners. There is no illegality or infirmity in the impugned order dated 16.12.2000, passed by the Chief Administrator, HUDA.

In view of the aforesaid, we find no merit in this petition and the same is hereby dismissed."

(77) Thus the position in this regard is the same for oustees where properties were acquired prior to 1987. We are in respectful agreement as the judgment is inconsonance with the judgment of this Court in Sandeep's case.

(78) In the circumstances, an oustee including one whose land was acquired prior to 1987 is liable to pay the price fixed in the advertisement by which the applications are invited from the oustees and pursuant to which advertisement the plot is actually allotted to the oustee.

(79) Another aspect of this question also requires consideration. It pertains to the price payable by an oustee who although entitled to be allotted a plot on a particular date and could have been allotted a plot on that date was allotted the plot much later. The answer to this question would depend upon the circumstances in which the oustee was not allotted a plot on the date which he was entitled to and could have

been allotted the same but was allotted the plot later. We have advisedly stated the situation to be one where the allottee was not merely entitled to be allotted the plot but also could have been allotted the plot. Where for any reason the plot could not have been allotted, this question would not arise.

(80) Where the oustee is at fault or was for any reason responsible for the same, he must pay the price prevalent as stipulated in the last sentence of paragraph-53 of the judgment of this Court in Sandeep's case, namely, the price prevalent in the advertisement inviting applications and pursuant to which the oustee was actually allotted the plot. There is no reason why in such circumstances the oustee should have the benefit of a price that was prevalent earlier, sometimes even many years ago.

(81) Where both the oustee and the respondents are at fault or were responsible for the same or where neither is at fault for the same, the same rule ought to apply. Even in such circumstances there is no warrant for permitting the oustee the benefit of a price that was prevalent many years ago. There is no reason for excluding such cases from the rule in the last sentence in paragraph-53 of Sandeep's case.

(82) There is yet another situation that must be dealt with, namely, where the respondents are entirely at fault. This is a situation where the oustee was entitled to a plot on a particular date and it was possible for the respondents to allot the plot on that date but they did not do so entirely on account of their default and not on account of any default on the part of the oustee. The ultimate allotment of the plot may even result at the end of a protracted litigation. When a court passes an order in favour of such an oustee, it infact holds that the oustee was entitled to the plot when he had made the application and was entitled to the allotment on that date and the respondents were in a position to handover the possession of the plot on that date but wrongly did not do so. In such circumstances it follows that the oustee would be entitled to the benefit of the price that was prevalent when he made the application and pursuant to that application the respondents deliberately did not allot the plot although they could have.

(83) However, even in such a case, the oustee must pay reasonable interest from the date on which he could have been given the possession of the plot till the date he is actually given the possession of the plot, for in such a case the oustee has had the benefit of the use of his money during this period. We appreciate that such an oustee would have been deprived during this period of the use of the

plot. This further fine tuning adjustment would require evidence and cannot conveniently be decided in a writ petition.

Re: Question No. 9

The basis on which the price is to be quantified/calculated for allotment under the oustee quota?

(84) While question No.4 dealt with the date on which the price is to be fixed, this question relates to the basis on which the price is to be quantified. Although this judgment is delivered in the above three writ petitions we permitted the counsel appearing in several other connected petitions to address us on the issues framed.

(85) Mr. Shailendra Jain, the learned counsel appearing for the petitioners in another Civil Writ Petition No.5106 of 2017 addressed us essentially on this question. He relied upon Regulations 2(b) (e) (h) and (i), 3 and 4 of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978. It is, however, necessary to also refer to section 15(2) and 15(3) of the Haryana Urban Development Authority Act, 1977 and to Regulation-6.

(86) Mr. Jain placed considerable reliance on the above regulations to contend that the price can be determined only in the manner stipulated in the regulations and not otherwise. Accordingly, he submitted that the market price cannot be fixed. He contended that the regulations provide a self contained mechanism for determining the market price of the plots and the respondents, therefore, cannot resort to any other method for the determination of the price of plots. He went to the extent of submitting that even in the general category the price must be worked out in the manner provided in the regulations.

(87) Sections 15(2) and (3) of the Haryana Urban Development Authority Act, 1977 read as follow:-

> **"15. Disposal of Land –**
>
> (2) Nothing in this Act shall be construed as enabling the authority to dispose of land by way of gift, but subject to this condition, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.
>
> (3) Subject to the provisions hereinbefore contained, the Authority may sell, lease, or otherwise transfer whether by

auction, allotment or otherwise, any land or building belonging to it on such terms and conditions as it may, by regulations, provide."

(88) The relevant Regulations of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 read as under:-

"2. Definitions – In these regulations unless the context otherwise requires:-

(b) "Additional Price" and "Additional Premium" means such sum of money as may be determined by the Chief Administrator in respect of the sale or lease of land or building by allotment, which may become payable by the transferee or lessee with respect to land or building sold or leased to him in a sector on account of the enhancement of compensation of any land or building in the same sector by the court on a reference made under section 18 of the Land Acquisition Act, 1894, and the amount of cost incurred in respect of such reference.

Explanation - For the purpose of this Regulation, the expression "the Court" means the court as defined in clause

(d) of section 3 of the Land Acquisition Act, 1894, and where an appeal is filed, the "Appellate Court".

(e) "Price" means the amount paid or promised for the transfer of immovable property on free-hold basis;

(h) "Sector" means an area of land which forms the unit for purposes of fixation of sale price/premium.

(i) "Tentative price" or "tentative premium" means such price/premium as may be determined by the Authority in terms of Regulation 4 for disposal by allotment in which the cost of land included is based on the compensation awarded by the Collector under the Land Acquisition Act, but does not include any enhancement that may be awarded by the court on a reference made under section 18 of Land Acquisition Act, 1894.

Explanation- For the purpose of this Regulation, the expression "the Court" means the court as defined in clause

(d) of section 3 of the Land Acquisition Act, 1894 and

where an appeal is filed, the "appellate Court".

3. **Mode of disposal** – Subject to any direction issued by the State Government under the Act and to the provisions of sub-section (5) of section 15 of the Act:-

(a) the Authority may dispose of any land belonging to it in developed or an underdeveloped form;

(b) any land or building of the Authority may be disposed of by Authority by way of sale or lease or exchange or by the creation of any easement right or privilege or otherwise;

(c) the Authority may dispose of its land or building by way of sale or lease either by allotment or by auction, which may be by open bid or by inviting tenders.

SALE OR LEASE OF LAND / BUILDING BY ALLOTMENT

4. Fixation of tentative price/premium –

(1) The tentative price/premium for the disposal of land or building by the Authority shall be such as may be determined by the authority taking into consideration the cost of land, estimated cost of development, cost of buildings and other direct and indirect charges, as may be determined by the Authority from time to time.

(2) An extra 10% and 20% of the price/premium shall be payable for "preferential" and "Special preferential" plots respectively.

"**SALE/LEASE OF LAND/BUILDING BY AUCTION**

6. Sale or lease of land or building by auction:- (1) In the case of sale or lease by auction, the price/premium to be charged shall be such reserve price/premium as may be determined taking into consideration the various factors as indicated in sub-regulation

(1) of Regulation 4 or any higher amount determined as a result of bidding in open auction.

(2) 10 percent of the highest bid shall be paid on the spot by the highest bidder in cash or by means of a demand draft in the manner specified in sub regulation (2) of Regulation

> 5. The successful bidder shall be issued allotment letter in form 'CC' or 'C-II' by registered post and another 15 percent of the bid accepted shall be payable by the successful bidder, in the manner indicated, within thirty days of the date of allotment letter conveying acceptance of the bid by the Chief Administrator; failing which the 10 percent amount already deposited shall stand forfeited to the Authority and the successful bidder shall have no claim to the land or building auctioned. (3) The payment of balance of the price/premium, rate of interest chargable and the recovery of interest shall be in the same manner as provided in sub-regulations (6) and (7) of Regulation-5. (4) The general terms and conditions of the auction shall be such as may be framed by the Chief Administrator from time to time and announced to the public before auction on the spot."

(89) The error in Mr. Jain's submissions arise on account of ignoring section 15 of the Act of 1977 and in particular sub section (3) thereof. Sub section (3) of Section 15 expressly entitles the respondents to sell, lease or otherwise transfer the lands or buildings belonging to the respondents including by auction. The concluding words in sub section (3)"……on such terms and conditions as it may by regulations provide" only refer to the mode of carrying out the transfers. The regulations have not and indeed cannot possibly curtail the provisions of the Act relating to the determination of the price. In an auction, the question of the respondents determining the price cannot arise as it is determined entirely as per the bids. Thus, section 15 itself contemplates the transfer of the respondents' properties by auction. The suggestion that as the regulations do not refer to auction, the respondents are not entitled to transfer their properties by auction is not well founded. There is nothing in the regulations that even remotely suggests that there is an intention to deprive the respondents' their statutory right contained in section 15(3) of transferring their properties inter-alia by auction.

(90) Regulation 2(b) was introduced on account of the fact that after the transfer of the property, there could well be an enhancement in the price on account of the enhancement that may be granted by a Reference Court under section 18 of the Land Acquisition Act. It is for this reason that Section 2(i) contains a definition of tentative price. The price is tentative and subject to fluctuation depending inter-alia upon

the result of the proceedings for enhancement under section 18 of the Land Acquisition Act. These regulations are not exhaustive of the permissible modes of price fixation.

(91) Regulation-4 does not and indeed cannot deprive the respondents the right to auction its properties. Regulation-3 deals with only the mode of disposal. It does not deal with price fixation. Regulation No.4 refers only to the tentative price.

(92) The doubt, if any, is set at rest by Regulation No.6 which expressly refers to the cases of sale or lease by auction.

(93) The contention that the respondents cannot dispose of their properties by auction and the price fetched at an auction cannot be the basis of price fixation for allotment of plots under the oustee quota is, therefore, rejected.The respondents are entitled to fix the price in any reasonable and just manner keeping all the facts and circumstances in mind including the nature of the allotment to oustees and the purpose thereof.

(94) Mr. Jain then submitted that the policies of the State of Haryana are binding on HUDA. He referred to a policy dated 07.12.2007 which was adopted by HUDA on 13.08.2008 and a policy dated 09.11.2010 adopted by HUDA on 07.03.2011. Mr. Punchhi submitted that the policies sanctioned by the Governor of Haryana are binding on HUDA in view of section 30 of the Act of 1977. The learned Advocate General fairly agreed that once HUDA adopts a policy, it is binding. He accordingly admitted that the policies dated 07.12.2007 and 09.11.2010 were binding on HUDA. In view thereof we need say no more.

Re: Question No. 10

Q. **Which policy is applicable to an oustee-the policy in force on the date of entitlement, the date of acquisition, the date of offer the date when the sector is floated or the date of exercise of option?**

(95) Mr. Punchhi's submission that the policy in force when the application is submitted and pursuant to which the allotment is made would be applicable is well founded. Mr. Bali supported this submission. Mr. Narender Singh's the learned counsel appearing on behalf of the petitioners in Civil Writ Petition No. 5927 of 2017, however, took a different stand. He submitted that the policy in force on the date on which the notification under section 4 of the Land

Acquisition Act was issued would apply.

(96) Mr. Bali and Mr. Punchhi's submission commends itself to us. This view is supported by the judgment of the Division Bench of this Court in Sandeep's case where it was held:-

> "**Question No.7.** Whether an oustee is entitled to an allotment of a plot in the next residential Sector even if the land is acquired for industrial, institutional or such like purposes irrespective of date of acquisition?
>
> **51.** A Division Bench of this Court in Smt. Suman Aneja's case (supra) has held that policies of rehabilitation are applicable irrespective of date of acquisition. The R & R policies are applicable even if the acquisition is for apurpose other than residential/commercial case, the entitlement of an oustee is for a plot in the residential sector in terms of the policy dated 27.03.2000. Therefore, even if land has been acquired for a purpose other than residential/commercial, an oustee is entitled to apply for a plot in the next residential sector even if acquisition is prior to the circular dated 27.03.2000. The entitlement of an oustee for a plot would be as per the existing policy at the time, when an oustee apply for a plot in response to public advertisement.
>
> **53**. In respect of second question i.e. what is the meaning of the words "normal allotment rate", the Court found that as a matter of fact the land-loser has made an application in the year 1990 for allotment of plot. A direction was issued by the Court in the year 1992, but the HUDA delayed allotment to the appellants. Therefore, the rate for which plots were initially offered was ordered to be charged. The said question has been answered keeping in view the facts of the aforesaid case, wherein application was submitted by an oustee, but still plot was not allotted to him. The said judgment does not lay down that the 'normal allotment rate' in all circumstances shall be the date when the sector is first floated for sale. As a matter of fact, the normal allotment rate would be the rate advertised by the HUDA in pursuance of which applications are invited from the general public and the oustees, in pursuance of which the plots are allotted."
>
> **56**. Thus, the present appeal as well as the other connected matters are disposed of with the following directions, in

addition to the decision on the questions of law discussed above:

> (ii) That the entitlement of the size of the plot and the procedure for allotment shall be as on the date of allotment in pursuance of an advertisement issued inviting application from the oustees."

(97) It is on a conjoint reading of the three paragraphs that we come to this conclusion. The last sentence in paragraph-51 merely states that the entitlement of an oustee of a plot would be as per the existing policy at the time when an oustee applies for a plot in response to public advertisement. This sentence by itself does not indicate whether the applicable policy is the one existing at the time of the first application or of any subsequent application for a plot. However, this sentence must be read with the last sentence in paragraph-53 which reads: "As a matter of fact, the normal allotment rate would be the rate advertised by the HUDA in pursuance of which applications are invited from the general public and the oustees, in pursuance of which the plots are allotted". It can hardly be suggested that the rate would be the rate advertised pursuant to which the applications are invited in pursuance of which the plots are allotted, whereas for other purposes the policy of an earlier date would be applicable. There is no reason to come to such a conclusion. It would create inconsistencies in the working of the entire system. In any event, paragraph-56(ii) makes it clear that even in respect of other issues such as entitlement of the size of the plot and the procedure for allotment, the applicable policy shall be the one in force as on the date of the advertisement issued inviting applications from the oustees and pursuant to which the allotments were made.

(98) Mr. Narender Singh relied upon the policies dated 03.06.1991 and 08.04.2015 in support of his contention that the policy in force on the date on which the notification under section 4 of the Land Acquisition Act was issued would apply.

(99) The submission is not well founded. Firstly, it is contrary to the judgment of this Court in Sandeep's case which as we mentioned more than once is binding on us in view of the judgments of the Supreme Court in Sandeep's case, Ved Pal's case and Krishna's case. We cannot hold a contrary view on the ground that the said policies dated 03.06.1991 and 08.04.2015 were not referred to in Sandeep's case.

(100) In any event, neither of these policies supports his

contention. The policydated 03.06.1991 refers to the earmarking of plots for oustees and requires oustees claims' to be invited before floatation of the sctor and within a time frame. This does not support Mr. Narinder Singh's contention.

(101) The last paragraph of the policy dated 08.04.2015 reads as follow:-

> "Therefore, it has been decided in view of the above judgments/opinion that an Oustees can apply in response to any advertisement but his case has to be considered by treating his eligibility as per policy applicable when Section 4 notification was issued. It has further been decided that the letter regarding withdrawl of Oustees Policy framed by HUDA prior to 07.12.2007 issued vide headquarters memo No.DA/HUDA/44131-132 dated 02.12.2013 is here by withdrawn and the claims of landowners whose land has been acquired prior to 05.03.2005 by the State of Haryana for development of Sectors of HUDA may be invited for allotment of plots as per availability of plots but their claims have to be considered by treating their eligibility as per policy applicable when Section-4 notification was issued.

(102) The same only talks about the eligibility to be determined as on the date of notification under section 4 of the Land Acquisition Act. It does not support Mr. Narender Singh's contention.

(103) In the circumstances, the policy applicable to an oustee is the one which is in force when an application is made pursuant to an advertisement issued by HUDA and in pursuance of which the plot is allotted.

Re: Question No.11

Whether in view of the Policy dated 28.08.1998, a person is entitled to the oustee quota only if his land is acquired for the purposes mentioned therein?

(104) The learned Advocate General of Haryana submitted that even an oustee in whose favour a plot is not allotted in the sector from which his land was acquired for no fault of his, such as on account of paucity of plots under the oustee category, would subsequently be entitled to the allotment of a plot only in the same sector from which his land has been acquired. He submitted that if the plots under the oustee quota are not available in the same sector, the oustee would not

be entitled to a plot in any other sector irrespective of the facts and circumstances of the case unless the acquired land is used for the four specific purposes stipulated in a policy dated 28.08.1998.

(105) This submission is not well founded. It requires the determination of the ambit of two policies communicated by the Chief Administrator, HUDA to the Administrator, Estate Officers and Assistant Estate Officers of HUDA dated 28.08.1998 and 08.12.2003 which in so far as they are relevant read as under:-

(1) "**Policy dated: 28.08.1998**

Subject: Allotment of plots to the oustees in the various Urban Estates set up by HUDA-amendment thereof.

This is in continuation of memo No.A-2-02/2078 dated 18.3.92 and No.A-11P-93/7996-8013 dated 12.3.93.

The present policy on the subject in force envisages that the allotment of residential /commercial plots under oustee policy shall be restricted to the allotments within the Sector for which the land has been acquired. This stipulation of the policy has been creating a practical problem at the implementation stage. Sometimes, the acquired land belonging to the land owners/oustees is developed by HUDA for the purposes other than for residential/commercial like recreational Sector, institutional zones, group housing societies and industrial purposes etc. etc. Then the land owners/oustees of the particular Sector are totally out of the purview of the policy and the land owners are not entitled for allotment of residential plot in lieu of their acquired land.

After careful consideration, the Authority in its 74th meeting held on 20.8.98, vie agenda item No.A-74(7)in partial modification of the policy on the subject in force have decided that "if the plot under the oustees policy cannot be offered to the oustees in the same Sector then they should be offered residential/commercial plots in the next residential Sector of that Urban Estate which may be floated and developed by HUDA". This amendment/provisions will be made applicable prospectively. All other terms and conditions, shall however remain the same.

These instructions may be brought to the notice of all concerned.

(2) **Policy dated: 08.12.2003**

> Subject: Allotment of plots to the oustees in the various Urban Estate set-up by HUDA-clarification thereof.
>
> This is in continuation of this office Memo No.A-11-P-98/24402-22 dated 28.08.1998 on the subject cited as above.
>
> The amendment in the oustees policy approved by the Authority, for allotment of plots to the oustees in the various Urban Estates developed by HUDA, as circulated vide Memo/circular referred to above specifically states that if the plot under the oustees policy cannot be offered to the oustees in the same sector (developed as "Non-residential") then they shall be offered only a residential plot, in the next residential Sector of the urban Estates which may be floated & developed by HUDA. Meaning thereby, the land owner whose land is acquired for the of a sector shall be entitled for a residential plot only, as per laid down eligibility/entitlement criteria". The word commercial wherever figured in the cisular dated 28.08.1998 referred to above, inadvertently, may be treated as withdrawn. The above clarification may be brought to the notice of all concerned."

(106) These instructions were apparently in view of clause (ii) of Annexure-A to the policy dated 12.03.1993 which we referred to earlier. Clause (ii) of Annexure-A reads as under:

> "**Procedure for inviting, scrutinizing, deciding of claims and mode of allotment to oustees**. **ANNEXURE 'A'**
>
> "(ii) The allotment of plots under oustees policy be restricted to the claimants within the sector for which the land has been/is being acquired."

(107) The learned Advocate General, Haryana, firstly relied upon the following statement in the policy dated 28.08.1998: "This amendment/provisions will be made applicable prospectively". This provision does not make any difference for any oustee's claim to the allotment of a plot under the oustee quota does not get extinguished even if it is not made when the oustee could have applied for the same. This is clear from paragraphs-49 and 50 of the judgment in Sandeep's case which we set out earlier. Thus the oustee would be entitled to the allotment of a plot in the next residential sector, if the plot under the oustee policy cannot be offered to the oustee in the same sector by virtue of the policy dated 28.08.1998 itself. It is also important to note that the policy dated 28.08.1998 expressly states that it is in partial

modification of the 12.03.1993 policy. In other words it is not a fresh policy. If the right of an oustee to the allotment of a plot is not extinguished even if he does not apply for the same when he could have, it would follow that the right would be governed at the relevant time by the earlier policies but as modified by the policy dated 20.08.1998. There is infact nothing in any of these policies that suggests the contrary. The policies do not suggest that the State of Haryana or the HUDA intended discriminating between the outstee's inter-se in this regard and in this manner. There is infact no intelligible differentia in this regard between the oustees who do not get the plots for no fault of theirs and the other oustees who alone according to the Advocate General are entitled to the plots on account of their lands having been acquired for the four specific purposes.

(108) The learned Advocate General submitted that the policy dated 20.08.1998 would operate only where the land acquired from the oustee is used for the four purposes mentioned therein namely (i) recreational sector, (ii) institutional zones, (iii) group housing societies and (vi) industrial purposes. In other words according to him under this policy an oustee would be entitled to the allotment of a plot in a sector other than the sector from which his property was acquired, only if the sector from which the outsee's land is acquired is used for these purposes. If, however, the sector is used even partly for the purposes other than these four purposes, the oustee would be entitled to the allotment of a plot under the oustee quota only in that sector from which his land was acquired and not in any other sector.

(109) As Mr. Bali, the learned senior counsel appearing on behalf of the petitioners in Civil Writ Petition No. 2747 of 2017 rightly submitted, this construction militates against the plain language of the policy dated 20.08.1998. These four purposes, namely, recreational sector, institutional zones, group housing societies and industrial purposes, are only illustrative of uses other than for residential purposes. The entitlement for the allotment in any sector i.e. even the sectors other than the sectors from which the oustee's property was acquired, exists where the sector from which the outsee's property was acquired is put to any use other than for residential purposes. The entitlement exists even if an oustee cannot be offered a plot in the same sector on account of the size of the plot to which he is entitled is not available in the sector from which his land was acquired.

(110) That the above four specified uses are only illustrative is clear from several factors inherent in the policy itself. It is clear firstly

from the use of the word "like" that precedes and prefixes the four specified purposes. It is also clear from the suffix "etc. etc." to these four words. The word et cetra means and indicates other similar things. If the oustee's entitlement to the allotment of a plot in other sectors was restricted only in the event of the sector from which his land was acquired being put to use for the said four purposes, the word "like" and the abbreviation 'etc.' would not have been used. The learned counsel appearing on behalf of the petitioners further rightly submitted that this is also clear from the words "sometimes".

(111) If the Advocate General's submission is accepted, it would render these words otiose and the use of these words meaningless.

(112) Paragraph-56(iv) of the judgment of this Court in Sandeep's case does not support the learned Advocate General's contention to the contrary. Paragraph-56(iv) reads as under:-

> "**56**. Thus, the present appeal as well as the other connected matters are disposed of with the following directions, in addition to the decision on the questions of law discussed above:
>
> (i) to (iii) xx xx xx
>
> (iv) That the oustees are entitled to apply for allotment of plot along-with earnest money in pursuance of public advertisement issued may be inviting applications from the general public and the oustees through one advertisement. If an oustee is not successful, he/she can apply again and again till such time, the plots are available for the oustees in the sector for which land was acquired for residential/commercial purposes or in the adjoining sector, if the land acquired was for institutional and industrial purposes etc. The plots to the oustees shall be allotted only by public advertisement and not on the basis of any application submitted by an oustee".
>
> (emphasis supplied).

(113) The learned Advocate General relied upon the words that follow the word "or" emphasized by us. The submission is not well founded. Firstly, paragraph-56(iv) must be read in the context of the entire judgment. The error in the submission arises on account of reading a part of a sentence in isolation. The Division Bench referred to these policies in the judgment. The Division Bench further set out the rights of the oustees in paragraphs-49 and 50 which we set out earlier.

The Division Bench did not construe the policy in such a restricted manner. In fact, the Division Bench did not consider these aspects at all. Even assuming it did it would make no difference for the second half of the sentence in paragraph-56(iv) relied upon by the learned Advocate General ends with the abbreviation "etc" for the word "et-cetra". The abbreviation etc. is used to indicate that further items are included. Thus, the Division Bench even in paragraph 56(iv) does not restrict the entitlement of an oustee to be allotted a plot in an adjoining sector only where his land was acquired for the said four purposes.

(114) In the circumstances, the entitlement of an oustee to be offered a residential plot in the next residential sector arises if the plot under the oustee policy cannot be offered to him in the same sector irrespective of the nature of the use his land is put to. Further, the benefit of this policy would enure to the oustees making an application for allotment of a plot under the oustee quota after 28.08.1998 even if it is a subsequent application. In other words even if the application for allotment was made prior to 28.08.1998 and was rejected for any reason whatsoever, the subsequent application if made after 28.08.1998 must be considered by extending the benefit of the policy dated 28.08.1998.

Re: Question No.12

Is an oustee who cannot be allotted a plot in the same sector entitled to the allotment of a plot in the next/adjoining sector? What is the concept of next residential sector vis.a.vis. an adjoining sector?

(115) The learned Advocate General fairly and rightly agreed that the words "next residential sector" in the policy dated 28.08.1998 read with the policy dated 08.12.2003 is not limited only to the sectors that abut the sector from which the oustee's land has been acquired and that if in the adjoining sector the plots are not available for any reason, the oustee would be entitled to a plot in the nearest sector where a plot under the oustee quota is available. A view to the contrary would be irrational and would not only not sub serve the purpose of an oustee quota but would militate against it. There is no reason why a plot in any alternate sector must be not allotted to the oustees. There would be no rational basis for such a view or provision. The plain language of the policy dated 28.08.1998 does not indicate such a limitation either. It uses the words "next residential sector" and not the words "the adjoining sector alone".

(116) The learned Advocate General had ofcourse contended that the oustee would be entitled to the allotment of a plot in the next residential sector only if the sector in which the oustee's land was acquired is used for the four purposes mentioned in the policy dated 28.08.1998 namely recreational sector, institutional zone, group housing societies and industrial purposes. We have already dealt with the submisions and rejected it while dealing with question No. 11.

Re: Question No. 13

What are the rights of co-sharers?

(117) We are informed that there are several petitions which concern the rights of the co-sharers and that we ought to deal with some of the issues in regard thereto.

(118) The parties referred to four policies relevant to the rights of co-sharers. We will first refer to these policies.

(A) Policy dated 09.05.1990

A policy dated 09.05.1990 is contained in a communication from the Chief Administrator, HUDA to the officers of the HUDA. Relevant part thereof reads as under:-

> "Subject: Allotment of residential plots/ commercial sites to the oustees in the various Urban Estates set up by HUDA.
>
> Sir,
>
> I am directed to address you on the above subject and to say that on scrutiny of the instructions issued vide this office Memo No.A-11-87/29034-44 dated 10.09.1987, these appears to be an ambiguity in the instructions of the Authority to give a plot in lieu of oustees land acquired on certain conditions. In order to remove these ambiguities, the Authority has amended the decision taken on 14.08.1987 as under:
>
> 1. Plots to the oustees may be offered if the land proposed to be acquired is under the ownership of oustees for a continuous period of 5 years before the publication of notification under section 4 of the Land Acquisition Act and if 75% of the total land owned by the Land Owners in that Urban Estates is acquired.
> 2. Oustees whose land acquired is:
>
> a) Less than 500 sq. yards should be offered 40 sq. yards

plots.

b) Between 500 sq. yards and one acre should be offered a plot of 250 sq. yards.

c) More than one acre should be offered a plot of 350 sq. yards.

3. In case there are a number of co-sharers for the land acquired such co-sharers be accommodated by offering one plot each of 250 sq. yards subject to the condition that the land acquired is at least one acre. In case acquired land of the co-sharer is less than one acre then only one plot of 250 sq. yards may be allotted in the joint name of co-sharers."

(emphasis supplied).

(119) There is an anomaly between paragraph 2 (c) and 3. Under paragraph-3 even if the holding is more than one acre, a co-sharer is entitled to a plot admeasuring only 250 sq. yards whereas under paragraph-2(c) an owner who is not a co-sharer is entitled to a plot admeasuring 350 sq. yards. This discrepancy was removed by the next policy which is dated 18.03.1992 and contained in a similar communication.

(B) Policy dated 18.03.1992

The policy in so far as it is relevant reads as under:-

"Subject: Allotment of residential plots/ commercial sites to the oustees in the various Urban Estates set up by HUDA.

Sir,

I am directed to address you on the above subject cited above and to inform you those formalities of policy for allotment of plots to the oustees has been engaging attention of HUDA since long. Thus, after due consideration the Haryana Urban Development Authority in its meeting held on 20.02.1992 under the chairmanship of Hon'ble Chief Minister, Haryana have decided that the plots to the oustees will only be offered if they were owners of land proposed to be acquired on the following terms and conditions:-

I) Plots to the oustees would be offered if the land proposed to be acquired is under the ownership of oustees prior to the publication of the notification under section 4 of the Land Acquisition Act and if 75% or more of the total

land owned by the Land Owners in that sector is acquired.

II) Oustees whose land acquired is:

a) Less than 500 sq. yards should be offered 50 sq. yards plots.

b) Between 500 sq. yards and one acre should be offered a plot of 250 sq. yards.

c) From 1 acre above could be allotted a plot of 500 sq. yards or where 500 sq. yards plots are not provided to the layout plan. Two plots of 250 sq. yards each may be given. The above policy shall also apply in case there are a number of co-sharers of the land which has been acquired. If the acquired land measures more than one acre, then for the purpose of granting benefits under this policy, the determining factor should be the area owned by each co-sharer respectively as per his/her share in the joint holding. In case the acquired land of the co-sharer is less than one acre, only one plot of 250 syd would be allotted in the joint name of the co-shares.

…(emphasis supplied).

Paragraph-3 takes care of the anomaly in the policy dated 09.05.1990.

(C) Policy dated 12.03.1993

The policy is contained in a similar communication which in so far as it is relevant reads as under:-

"Subject: Allotment of residential plots/ commercial sites to the oustees in the various Urban Estates set up by HUDA.

……..Further, to it, Authority while laying down the procedure to settle such claims, have decided, in partial modification of the earlier policy as under:-

1. xx xx xx

2. Benefit under oustees policy shall be restricted to one plot according to the size of the holding irrespective of the number of co-sharers."

(D) Policy dated 07.12.2007

The last policy in this regard is dated 07.12.2007. Clause 3

at the end of the policy reads as follows:-

"(3) This policy will be applicable with effect from 5th March, 2005 and cover all those cases of acquisition in which awards of compensation were announced on or after 5th March, 2005."

(120) The right of co-sharers were dealt with in a group of petitions, the first of which is the case of Santosh Kumari *versus* State of Haryana and others Civil Writ Petition No.6684 of 2004. A Division Bench of this Court (to which one of us S.J.Vazifdar, ACJ was a party) by an order and judgment dated 04.04.2016 held as under:-

"Petitioners, in this bunch of 33 petitions, happened to be the co-owners, whose land holdings were acquired by the State Government, vide different or pursuant to the same acquisition proceedings, as the case may be. Their grievance is common; though the petitioners being oustees were entitled for allotment of plots/sites in terms of the Rehabilitation and Resettlement Schemes, but their claims were rejected, for they were co-owners in a joint Khata and were, thus, not entitled to seek allotment independently in their respective names. The issue is free, in the wake of the decisions rendered by this court in the recent past, from any complexity; **Jarnail Singh and others** v. **State of Punjab and others**, 2011 AIR (Punjab) 58; **Haryana Urban Development Authority & others** v. **Sandeep & others**, dated 25.04.2012 and **Bhagwan Singh & others** v. **State of Haryana and others**, dated,26.04.2012, CWP-10941-2010.

In Jarnail Singh and others *(supra),* which is a decision rendered by a Full Bench, the grievance of the co-owners, whose land was acquired, was similar; that all of them were entitled to allotment of plots/sites individually, and in their own right. Thus, restriction of allotment of one plot to all the co-owners was arbitrary and irrational. And on a consideration of the matter, it was concluded:

"20. We find that the restrictions of allotment of one plot to a joint khata holder is unreasonable and arbitrary as each of the land owner is entitled to rehabilitation in his individual right. The rights of co-owners have been delineated in the judgment of this Court in Sant Ram Nagina Ram's and reiterated by a Five Judges Bench

judgment in Ram Chander's cases *(supra).* A co-owner is owner of land as much as his other co-owners are. Mere fact that two or more persons have not sought partition of their holding and/or are enjoying the joint possession, does not affect the title of each of the co-owners. The co-owners are deprived of their title and possession by way of acquisition of land. Therefore, there is no reasonable explanation as to why a co-owner has been made ineligible, except to the extent that number of co-owners would be so large, which will make the process of acquisition itself futile.

21. Thus, we are of the opinion that the Clause restricting the allotment of one plot to all co-owners is irrational, arbitrary and with no reasonable nexus with the objective to be achieved and thus, not sustainable.Therefore, we hold that Clause 6 (V) of the Policy dated 16.9.1994 restricting allotment of one plot to all the cosharers, is illegal and void."

And, in Bhagwan Singh & others (*supra),* the question that once again engaged the attention of the Division Bench, this time, in matters pertaining to the State of Haryana, was: whether a co-owner was entitled for allotment of a separate plot/site, though in terms of the State policies all the co-owners could only be allotted one plot jointly. In reference to the decision rendered by the Full Bench in Jarnail Singh and others *(supra),* it was concluded:

"In view of the judgment of Full Bench in Jarnail Singh's case *(supra)* dealing with the rights of the cosharers, each of the cosharer is entitled to a plot of a size keeping in view his land holding. The rights of the oustees for allotment of a plot has been discussed by this Court in LPA No.2096 of 2011 titled "Haryana Urban Development Authority & others Vs. Sandeep & others" decided on 25.04.2012.

Consequently, the present petition as well as other connected petitions stand disposed of with a direction to the respondents to consider the claim of each of the cosharer for allotment of a plot keeping in view his holding and in accordance with the principles of law laid down in Sandeep's case *(supra)."*

> Concededly, the decisions rendered by this court in all the three matters, referred to above, have since attained finality. For, the judgment rendered by the Full Bench in Jarnail Singh and others (supra) was not assailed any further, and in the other two matters, the Special Leave Petitions preferred by HUDA were dismissed by the Hon'ble Supreme Court.
>
> What we deduce from the ratio of law laid down in Jarnail Singh's case (supra) is that a co-owner is as good a landowner as an individual who is the sole owner of his holding. A co-owner holds an absolute title or ownership over a land, in proportion to his share, in a joint Khata. Therefore, it makes no difference in law that a land that was acquired formed part of the joint holding or not. Just because the land that was acquired was joint or un-partitioned would not dilute the title of a co-owner a bit.
>
> Rather, what is to be borne in mind is that in either of the situation, a landowner loses his land and is termed as oustee. And it is precisely for that reason he is not only awarded compensation, in proportion to his holding, but is also entitled for allotment of a plot/site in terms of the policies/schemes of the Government as a rehabilitation measure. A co-owner always has an option to seek partition of the joint holding, for a joint Khata is for the mutual convenience and suitability of the co-owners. Therefore, even a co-owner shall be entitled to seek allotment of a site/plot individually and independently, in proportion to his/her share in a joint Khata, provided he/she meets the eligibility conditions/criteria set out in the policy/scheme in operation at the relevant time."
>
> ..(emphasis supplied).

(121) The rights of the co-owners are therefore now established by the judgment of the Full Bench of this Court in Jarnail Singh's case. The judgment is binding on us. The question, however, that remains is the manner in which these rights can be enforced.

(122) In our view, once a person establishes his right to be allotted a plot under the oustee quota as a co-sharer, his application must be decided in the same manner in which the application of any other

oustee is considered. All the policies and the principles governing any other persons would also apply to co-sharers. For instance, a co-sharer would also be entitled to the benefit of an alternate plot in the next/adjoining plot if he is not allotted a plot in the sector from which his lands were acquired. The co-sharers rights would be determined based on his individual share. For instance, a co-owner may not loose 75% of his independent holding. In that event he would not be entitled to be allotted a plot under the oustee quota.

(123) The learned counsel for some of the petitioners sought to address us on the merit of their petitions. For instance, Mr. Bali submitted that his case on facts stand on a higher footing for the judgment in Santosh Kumari's case *(supra)* has attained finality and being a judgment inter parties the petitioners therein would be entitled to have it enforced dehors anything else.

(124) We do not intend declining each petition on merits. That was not the purpose for constituting the Full Bench. Each petition will be decided on its own merits in accordance inter alia with this judgment.

(125) The reference is accordingly disposed off as per the answer to each of the questions.

Re: Question No.14

Whether the policy of 11.08.2016 or any part thereof is illegal?

(126) The learned Advocate General stated that the policy dated 11.08.2016 was formulated to implement the decision of this Court in Sandeep's case. The policy is contained in a letter addressed by the Chief Administrator, HUDA to the officers of HUDA. It opens by stating inter alia that the instructions contained therein were being issued with a view to implement the judgment of this Court in Sandeep's case, it refers to the dismissal of the SLP against that case and to the judgment of this Court in Civil Writ Petition No. 10941 of 2010 Bhagwan Singh and others vs. State of Haryana and others. The Special Leave Petition against this judgment was also dismissed by the Supreme Court. Therefore, in order to ensure implementation of the aforesaid direction and to ensure settlement of outsees claims, it has been decided to issue instructions with following terms and conditions for eligibility:

(127) We do not intend considering the validity of every aspect of

this policy. We will only refer to those aspects of the policy as are relevant to this judgment.

(128) Clause-1 of the policy reads as under:-

> "1. An oustee shall have to submit an application for allotment of plot under the oustees quota alongwith earnest money in pursuance of advertisement inviting claims for such allotment."

(129) This clause is procedural. It does not indicate the consequence of an oustee not being allotted a plot for different reasons such as those we referred to viz. where the oustee is at fault, where the respondents are at fault, where both are at fault and where neither are at fault. The clause does not affect the existing rights of oustees. Thus, even assuming that fresh applications are to be made, this clause by itself does not affect the rights of oustees which we have decided in this judgment.

(130) Clause 2 of the policy reads as under:-

> "2. An oustee shall be entitled to seek allotment of plot in the same Sector for which land has been acquired for residential/commercial purpose. However, where the land has only been acquired for any non- residential purpose such as industrial, institutional, group housing sites, completely commercial Sector etc., then such an oustee shall be entitled to seek allotment of plot in the adjoining Sector. Adjoining Sector for this purpose shall mean the Sector with boundaries abutting to the said Sector. Where there are more than one Sectors adjoining to the Sector for which land has been acquired, in that case, an oustee shall be entitled to make an application in any one Sector of his choice. However, where any such application is made in more than one Sector then only his one application in any such sector at the discretion of the HUDA Authority shall be considered and earnest money in respect of other applications shall automatically stand forfeited and no claim for such forfeiture shall lie in future."

(A) This clause is similar to the corresponding provisions of the policy dated 28.08.1998. What we said in respect of that policy applies equally to this clause. In other words, if a plot under the oustee quota is not available in the same sector from which the oustee's property has been acquired, he would be entitled to the allotment of a plot under the oustee quota from any other sector.

This entitlement is not limited to the cases specified in the clause, namely, industrial, institutional, group housing sites, completely commercial sector etc. This is clear from the words "any non-residential purpose such as" which precede the words "industrial, institutional, group housing sites, completely commercial sector etc.". The words "any" and "such as" strengthen this view. The word "etc" at the end of the sentence further strengthens the view. The word "et cetera" indicates other such similar things. The petitioners' apprehension in this regard is, thus, set at rest.

(B) The petitioners also expressed understandable concern regarding the sentence: "Adjoining sector for this purpose shall mean the sector with boundaries abutting to the said sector". They apprehend that the respondents may construe the clause as restricting the oustees rights only to the sectors with boundaries abutting the sector from which the oustee's property was acquired. The apprehension is allayed by the learned Advocate General's statement that if in the abutting sector a plot is not available under the oustee quota, the oustee may seek the allotment of the plot in the next available sector. We agree that that is the purport of the clause. The sentence is illustrative and was added only to indicate that if a plot is not available from the oustee quota in the sector from which the oustee's land was acquired, it could be allotted from another sector. The intention was not to restrict this right only to the immediately abutting sector even if a plot in that sector is not available. If that was the intention, the clause would have been worded entirely differently.

(131) Clause 3 of the policy reads as under:-

"3. The application of an oustee shall be considered against the plots determined under oustees quota as per the instruction issued vide memo No.UB-A-6-2016/2213 dated 04.12.2015. The number of plots shall be determined on basis of total available plots advertised."

(132) Mr. Bali, Mr. Punchi, Mr. Narender Singh, Mr. Sandeep Sharma and Mr. Sanjay Vashisth rightly submitted that this clause is not contrary to Brij Mohan's case. The memo dated 04.12.2015 fixes the percentage of reservation for each of the categories mentioned therein which includes the oustees, schedule castes, schedule tribes,

backward classes, war widows, disabled soilders, widows, freedom fighters, the handicapped, the blind, paramilitary forces, defence personnel etc. The last sentence in this clause only provides that the number of plots for the oustees shall be determined on the basis of the total available plots advertised which is but natural for only the number of plots advertised would be available. It only indicates that the respondents are not bound to advertise the total available plots in a sector at the same time. The plots may be floated from time to time in varying qualities.

(133) Further, clause 3 does not stipulate that the plots when advertised would be allocated to the oustee's quota only to the extent of 10% of the plots advertised. If that was the intention, it would have been stated so specifically. In this view of the matter, it is not necessary to test the validity of the clause had it meant otherwise.

(134) Clause 4 of the policy reads as under:-

> "4. An oustee shall have the right to make such application only till the plots are available for oustees in the Sector as per condition No. 2 and 3 above."

(135) This clause only means that for a sector the oustee can make an application only to the extent of reservation for the oustee category namely 10%. This is in inconformity with Sandeep's case and what we have held.

(136) No objections were raised in respect of clauses 5 and 6 of the policy.

(137) Clause 7 of the policy was not challenged and we, therefore, do not express any view in respect thereof.

(138) Clause 8 of the policy reads as under:-

> "8. The eligibility of each co-sharer for allotment of plot under oustees quota shall be determined on the basis of his individual holding i.e. each co-sharer will be entitled to seek allotment of plot on basis of his own individual holding."

(139) This clause is in conformity with what we have held in respect of question No. 13 pertaining to the co-sharers.

(140) The learned counsel did not address any arguments on clauses 7, 9 and 14 of the policy. We, therefore, express no view in respect thereof. The issue as to the validity of these clauses is kept open. We may only note that even the respondents were hard pressed to

explain the first sentence of Clause 11. The learned Advocate General stated that the respondents would recounter and if necessary clarify the same.

(141) Clause 15 of the policy reads as under:-

> "15. An oustee who has made an application for allotment of plot under oustees policy on any previous occasion and said application either is pending for decision or was rejected on any ground and said rejection order was impugned before any court of law or Authority or Forum of any nature and matter has been remanded back to the Authority for fresh decision, shall be informed, of the decision in Bhagwan Singh's case and Sandeep's case and may be advised to apply for allotment of plot in fresh advertisement which will be issued after determination of reservation and their earnest money may be refunded along with interest @ 5.5% per annum from date of deposit till date of payment. However, where litigation is pending then the Court of law or authority or forum where it is pending may be informed of the aforesaid decision and efforts may be made to get the litigation disposed off in terms specified herein."

(142) The clause is merely advisory and recommendatory. It does not create or curtail any rights. The rights of oustees will be determined as per this judgment.

(143) Clauses 16 and 17 of the policy read as under:-

> "16. The applications of the oustees as received shall be put in draw of lots and eligibility of only those oustees who are successful in draw of lots shall be determined. Mere submission of such application or success in draw of lots shall not create any vested right for such allotment as eligibility will be determined only after oustee is declared successful in draw of lots.
>
> 17. The list of applicants shall be compiled within a period of 15 days of closing of the scheme and draw shall be held within a period of 30 days of closing of scheme for advertised plots. The eligibility of the oustees who are successful in draw of lots shall be determined within a further period of one month. If any outsee who is declared as successful in draw of lots is found ineligible as per

policy, then his draw shall be cancelled. The plot which will become available on account of such cancellation of draw may again be put to draw of lots out of remaining oustees who were earlier unsuccessful in the same draw. The earnest money of unsuccessful applicants may be refunded thereafter. No interest shall be payable on said amount if it is refunded within a period of 6 months from closing of the scheme otherwise interest @ 5.5% per annum may be paid on earnest money after expiry of 6 months till date of payment."

(A) Mr. Narender Singh submitted that the eligibility of the applicant must first be determined and only the eligible applicants ought to be permitted to participate in the draw of lots.

(B) That may well be a better way of doing things. However, there is nothing illegal about the procedure stipulated in paragraph-16. The same may save time instead of first determining the eligibility which may well involve litigation even before the draw of lots is held.Clause 16 would at least ensure that those applicants whose eligibility is not questioned can at least get the plots at an early date.

(144) We do not intend dealing with any of the petitions on-merits. For instance Mr. Bali relied strongly upon the fact that irrespective of this judgment, the petitioners in Civil Writ Petition No. 2747 of 2017 are entitled to the benefit of the judgments inter-partes which have attained finality. We intend placing these petitions before the Division Bench for their disposal inter-alia in accordance with this judgment.

(145) The reference is accordingly answered. All the writ petitions shall be placed before the Division Bench as per roster on 08.01.2018 and the same will be decided keeping in mind inter-alia our answer to each of the questions. Needless to add, the Division Bench shall be entitled to either decide the petitions on-merits or direct the authorities to take a fresh decision in accordance inter-alia with this judgment.

(146) The respondents shall be entitled to dispose off plots after reserving plots for the oustees in accordance with this judgment. It is clarified that this does not release the respondents from their obligations to comply with orders and judgments of the Courts, if any, in individual cases of oustees albeit within the oustee quota.

P.S.Bajwa