2025 INSC 843

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 7707 OF 2025**

**(Arising out of Special Leave Petition (C) No. 15148 of 2017)**

**ESTATE OFFICER, HARYANA URBAN DEVELOPMENT AUTHORITY AND ORS. …APPELLANT(S)**

**VERSUS**

**NIRMALA DEVI …RESPONDENT(S)**

**J U D G M E N T**

**WITH**

CIVIL APPEAL NO. 7708 OF 2025

(@SLP CIVIL NO. 25549 OF 2017)

CIVIL APPEAL NO. 7709 OF 2025

(@SLP(C) No. 20604 OF 2017)



CIVIL APPEAL NO. 7710 OF 2025

(@SLP(C) No. 20614 OF 2017)

CIVIL APPEAL NO. 7711 OF 2025

(@SLP(C) No. 20608 OF 2017)

CIVIL APPEAL NO. 7712 OF 2025

(@SLP(C) No. 20640 OF 2017)

CIVIL APPEAL NO. 7713 OF 2025

(@SLP CIVIL NO. 18218 OF 2025)

(@Diary No. 9756 OF 2017)

CIVIL APPEAL NO. 7714 OF 2025

(@SLP(C) No. 15152 OF 2017)

CIVIL APPEAL NO. 7715 OF 2025

(@SLP(C) No. 15306 OF 2017)

CIVIL APPEAL NO. 7716 OF 2025

(@SLP(C) No. 15273 OF 2017)

CIVIL APPEAL NO. 7717 OF 2025

(@SLP(C) No. 15146 OF 2017)

CIVIL APPEAL NO. 7718 OF 2025

(@SLP(C) No. 25553 OF 2017)

CIVIL APPEAL NO. 7719 OF 2025

(@SLP(C) No. 20617 OF 2017)

CIVIL APPEAL NO. 7720 OF 2025

(@SLP(C) No. 20642 OF 2017)

CIVIL APPEAL NO. 7721 OF 2025

(@SLP(C) No. 15274 OF 2017)

CIVIL APPEAL NO. 7722 OF 2025

(@SLP(C) No. 25547 OF 2017)

CIVIL APPEAL NO. 7723 OF 2025

(@SLP(C) No. 25555 OF 2017)

CIVIL APPEAL NO. 7724 OF 2025

(@SLP(C) No. 20616 OF 2017)

CIVIL APPEAL NO. 7725 OF 2025

(@SLP(C) No. 20607 OF 2017)

CIVIL APPEAL NO. 7726 OF 2025

(@SLP(C) No. 15147 OF 2017)

CIVIL APPEAL NO. 7727 OF 2025

(@SLP(C) No. 949 OF 2018)

CIVIL APPEAL NO. 7728 OF 2025

(@SLP(C) No. 4787 OF 2018)

CIVIL APPEAL NO. 7729 OF 2025

(@SLP(C) No. 30437 OF 2018)

CIVIL APPEAL NO. 7730 OF 2025

(@SLP(C) No. 30436 OF 2018)

CIVIL APPEAL NO. 7731 OF 2025

(@SLP(C) No. 30438 OF 2018)

CIVIL APPEAL NO. 7732 OF 2025

(@SLP(C) No. 30439 OF 2018)

CIVIL APPEAL NO. 7733 OF 2025

(@SLP(C) No. 12014 OF 2021)

CIVIL APPEAL NO. 7734 OF 2025

(@SLP(C) No. 12015 OF 2021)

CIVIL APPEAL NO. 7735 OF 2025

(@SLP(C) No. 12016 OF 2021)

**J. B. PARDIWALA, J.:**

For the convenience of exposition, this judgment is divided in the following parts: -

**INDEX**

1. Delay condoned in Diary No. 9756 of 2017. Leave granted in all the Special Leave Petitions.

2. Since the issues involved in all the captioned appeals are same and the challenge is also to the self-same judgment and order passed by the High Court, those were taken up for hearing analogously and are being disposed of by this common judgment and order.

3. This batch of appeals arises from a common judgment and order passed by the High Court of Punjab and Haryana dated 12.08.2016 by which the Second Appeals filed by the appellant herein came to be dismissed, affirming the judgment and order passed by the First Appellate Court affirming the decrees passed by the trial court in favour of the respondents herein.

## A. HISTORY OF THE LITIGATION

4. Our order dated 05.03.2025 by itself would give more than a fair idea as regards the history of this litigation and the issues involved in the matter. Our order dated 5.03.2025 reads thus:

> *" O R D E R*
>
> *1. We heard Ms. Aishwarya Bhati, the learned Additional Solicitor General appearing for the Haryana Urban Development Authority i.e. the petitioners – herein and the learned counsel appearing for the respective respondents in each of the petitions before us.*
>
> *2. Having heard the matter for quite some time, we have been able to understand the controversy involved in this litigation. What we have been able to understand prima facie is that in the State of Haryana, there is a very unusual policy with respect to land acquisition. If the Government*

*wants to acquire land for public purpose, it proceeds in accordance with the provisions of Land Acquisition Act. However, it has its own policy of even providing alternate plots of land to the oustees. It all started in the year 1989 with the issue of Notification under Section 4 of the Land Acquisition Act. In 1990, the Section 6 Notification came to be issued. In the year 1992, the awards were passed.*

*3. We were taken through the relevant features of the policy relating to allotment of residential plots/commercial sites to the oustees. The same is at Annexure `P1' in the first matter before us.*

*4. Thereafter, we were taken through the various pleadings in the plaint which is at Annexure `P6'.*

*5. Prima facie, it appears that the suits filed by the individuals/oustees are one invoking Section 39 of the Specific Relief Act, 1963.*

*6. We also take notice of the fact that in some of the cases, the Trial Court dismissed the Suits whereas few came to be allowed.*

*7. However, the fact is that all these petitions arise from a common Judgment and order passed by the High Court dismissing in all 27 Second Appeals.*

*8. Today, Ms. Bhati, the learned Additional Solicitor General invited our attention to the order passed by this Court dated 8-5-2017, the same reads thus:-*

> *"Delay condoned Shri Shyam Divan, learned senior counsel appearing on behalf of the petitioner submits that the petitioner will abide by the policy framed on 11.08.2016 and every eligible oustee will be accommodated according to the said Policy. Issue notice restricted to the question of correctness of the general direction made by the High Court in granting allotments to all claimants who may not be similarly situated. In the meantime, there shall be stay of execution."*

*9. The plain reading of the aforesaid order would indicate that at the relevant point of time, a statement was made on behalf of the Authority that they were ready and willing to consider the claims of the oustees in accordance with the policy of 2016.*

*10. Therefore, this Court thought fit to issue notice limited to the general direction which has been issued by the High Court in its impugned judgment and order, referred to above. To the aforesaid, there is a strong objection at the end of the learned counsel appearing for the individual oustees. Their claim is that they are entitled to the benefit of the Policy of 1992 and not 2016.*

*11. To a very specific question put to them as to why they are objecting to the Policy of 2016, the reply was that the rates have been increased over a period of years. They want allotment at the rate which were prevalent in accordance with 1992 policy and not in accordance with 2016 policy. This aspect will have to be looked into.*

*12. Ms. Bhati put forward three contentions. First, all those oustees who had actually not applied in accordance with the policy prevalent at the relevant point of time, could not have instituted the suits invoking Section 39 of the Specific Relief Act. According to Ms. Bhati, such suits by itself were not maintainable.*

*13. Her second contention is that each co-sharer is not entitled to individual plots and the third contention is with regard to limitation.*

*14. Before we proceed to hear these matters finally, we want the following information to be placed on record for better and effective determination of the issues falling for our consideration:-*

*(i) in how many cases before us, the concerned outstee(s) had not applied at all;*

*(ii) How many had actually applied;*

*(iii) the fine distinguishing features between the policy of 1992 and 2016 respectively;*

*(iv) how many suits were allowed, whereas how many were dismissed by the Trial Court.*

*15. We would also request Ms. Bhati, the learned ASG to make us understand the purport of the judgment delivered by this Court in "Brij Mohan and Others vs. Haryana Urban Development Authority & Anr. (2011) 2 SCC 29 (Civil Appeal No.1 of 2011), decided on 3-1-2011.*

*16. In the last paragraph of the impugned order passed by the High Court, we find reference of Udai Singh's case. It appears that the entire impugned judgment is based on the ratio of Udai Singh's case.*

*17. We are informed that Udai Singh's Judgment was carried to this Court by way of Special Leave to Appeal (Civil) Nos.8766-8767/2023 which came to be dismissed by this Court vide order dated 24-11- 2025.*

*18. We would also like to know from Ms. Bhati whether the High Court was justified in relying on the dictum as laid in the Udai Singh's case.*

*19. Let the aforesaid information come on record by way of an affidavit. 20. Post these matters on 25-3-2025 as Item No.1 to be treated as Part-heard."*

5. In pursuance of our order dated 5.03.2025 referred to above, the appellant through its Estate Officer has filed an additional affidavit answering the four specific questions put by us.

6. To the first two questions put by us, the reply of the appellant is as under:

"*(i & ii) In reply to the information as sought for in para 14(i)(ii) of the order dated 05.03.2025, it is submitted that from the subsequent paras it is evident that any of the respondent did not submit application as per the specific format provided in brochure issued seeking allotment of plot under Oustees quota and further failed to pay 10% of the earnest money as mentioned over there. Therefore, it cannot be said any of the concerned oustees had applied seeking allotment of plot under Oustees quota as per the brochure issued by the petitioner authority inviting applications for an allotment of plot. It is submitted that as per condition of the brochure issued by the petitioner authority the application shall be deemed to be valid only*

*in those cases where the application so submitted are accompanied by earnest money. In present case any of the respondent has not submitted the earnest money with the application if any so submitted.*

*iv.) In respect to para 14(iv) of the order it is submitted that in total 30 civil suit instituted (26 in respect to impugned order dated 12.08.2016), (3 in respect to impugned order dated 30.07.2019) & (1 in respect to impugned order dated 07.01.2016) by the respondents and out of 30 civil suits, 12 civil suits were dismissed and 18 civil suits decreed by the Ld. Civil Judge. A chart in respect to each suit dismissed/decreed has been annexed with this additional affidavit.*

*xxx xxx xxx*

*28. I say and submit that under all the policies framed by petitioner HDUA from time to time and amended the requirement of the public notice/advertisement to be issued inviting applications from the interested persons including the oustees and the applications are to be submitted in the prescribed format along with earnest money and terms and conditions of the brochure so issued the application shall be deemed to be valid application if the same has been submitted with earnest money.*

*xxx xxx xxx*

*29. I say and submit that when the applications have not been submitted in the prescribed format that to without the earnest money therefore the respondents are not entitled for any relief and it will amount to wind full gain if the respondent to have been fully compensated in accordance with statutory scheme for the land acquired for public purpose by the state if despite have not paid a single penny if they are giving their plot as per the 1992 rates."*

7. As regards the distinguishing features between the Policy of 1992 and the revised Policy of 2016 respectively, the appellant has explained the same in the following manner:

## ***"DISTINGUISHING FEATURES BETWEEN THE POLICY OF 1992 AND POLICY OF 2016***

| *Terms and conditions of Policy dated 18.03.1992* | *Terms and conditions of Policy dated 11.08.2018* | *Modifications done in policy dated 01.08.2016 as modified on 08.05.2018* |
|---|---|---|
| *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.* | | |
| | *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 sector 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.* | *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 and in case the plots are not available in the same sector for which land has been acquired for residential/commercial purpose, then such an oustee may also be considered for allotment in an adjoining sector except where the land was acquired prior to 10.09.1987. Where the land has only been acquired for any non-residential purpose such as industrial, institutional, Group Housing sites and completely commercial sector etc. then such an oustee shall be entitled to seek allotment of plot in an adjoining sector. Adjoining sector for this purpose shall mean any sector where boundary abuts that of the said sector. However, if no plot is available for one or more oustees in any of the adjoining sectors, then a sector adjoining to any of the original and adjoining sectors, may be considered for purpose of allotment of plots. An oustee shall be free to apply for allotment of an ouste quota plot* |

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| | | *in one, more or all the adjoining sectors. It is clarified that once any of these applications is successful all remaining applications shall be automatically assumed to have been cancelled.* |
| | *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-62016/2213 dated 04.121.2015. The number of plots shall be determined on basis of total available plots advertised.* | *3. The application of an oustee shall be considered against the plots determine under oustee quota as per the instruction issued vide Memo No. UB-A-6-2016/2213 dated 04.12.2015. The percentage of plots shall be determined on the basis of plots in a sector and it shall be ensured that number of plots allotted under all the reserved categories shall not exceed maximum limit of 50% of the plots in a sector. The charge in number of plots in a sector subsequently should be taken into account for determining the reservation of oustees quota plots.* |
| | *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.* | |
| *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% of more of the total land owned by the land owners in that sector is acquired.* | *6. An oustee should have been the owner of the land as on the date when the notification under Sec. 4 of the Land Acquisition Act, 1894 is issued. Any subsequent purchaser of land after said notification has been issued will not be entitled to make such application. Any application made by such purchaser shall entail automatic rejection of application and forfeiture of earnest money. However, the forfeiture of earnest money will be done only after giving opportunity of hearing to the defaulting applicant. 7. An oustee shall be eligible to make such application only if 75% or more* | |

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| | *of his total land in the concerned revenue estate is acquired. For this purpose, the total land to be considered for such determination will mean the land comprised in the same revenue*<br>*Estate(s) where the concerned sector is situated.* | |
| *iii) 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*<br>*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 sqd would be allotted in the joint name of the co sharers.*<br>*(Amended vide Memo No.A-11P-93/7996-8013 dated 12.03.1993 as under:*<br>*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.* | *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.* | |
| *vii) The commercial sites/building are sold by auction. The sites/buildings be also allotted to oustees on reserve price as and when the auction of the same is held. While putting such sites/buildings to public auction, the oustees who want to purchase the sites /buildings could represent before hand* | *10. No commercial site will be allotted to the oustees* | |

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| *for them. However, if the area acquired of the commercial site is equivalent or less to the area of booth shop cum flat being auctioned by HUDA they may be given a booth /SCO sites keeping in view the size of acquisition under this policy. (Amended vide Memo No.A-11P-98/24402-22 Dated: 28.08.1998.)* | | |
| | *13. A co-sharer in the land will not be eligible to claim allotment of plot if he had given a no objection certificate in favour of his co-sharer and on account of submission of such no objection certificate a plot was allotted to such co-sharer in any previous floatation of plots for oustees.* | |
| *v) As per the policy the oustees shall be entitled to a developed plot/plots, the size of which would depend upon the area of his acquired land subject to a maximum of 500 syd. The oustee shall be entitled to this benefit under this policy only once in the same town where the land of a person situated / located. However, in cases where the land of a person situated in the same town is acquired in pockets at different times. The owner shall be entitled to claim the benefit on account of the entire area acquired at different times for purposes of claiming the benefit under this policy.* | *14. An o ustee who has already been allotted a plot under the oustees policy on any previous occasion as a co-sharer shall not be entitled to stake claim for allotment of plot under oustees quota.* | |
| | *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* | *In Clause 15 of the guidelines, following clause may be added 15(a). Where an application is made by an oustee in an advertisement issued afresh, the price of plot that may be charged from him if he is* |

| | | |
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| | *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 also 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 @ 55% per annum from date of deposit till date of payment. However, where litigation is pending then the court of law authority or forum where it is pending may be informed of the aforesaid decision and efforts may be made to get the litigation disposed of in terms specified herein.* | *successful in draw of lots out of plots reserved for oustees shall be the rate as advertised in a new advertisement in cases where the allotment of plot could not be effected despite determination of his eligibility, the prevalent price at the time of application by the oustee in pursuance to an advertisement may be charged alongwith simple interest @ 11% per annum till date. It is clarified that eligibility for the purpose as aforesaid shall be treated as determine only when Sachin completed and satisfied all the formalities/conditions as per the applicable policy.* |
| | *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 of if any outstay who is declared as successful in draw of Lords is found in eligible as per policy then his draw shall be cancelled the plot which will become available on account of such cancellation of draw me again be put to draw of lots out of remaining out these who were earlier and unsuccessful in the same bro the earnest money of successful applicants may be refunded their after no inter shell be payable on the said amount if it is a refunded within* | |

| | | |
|---|---|---|
| | *a. of from closing of 1226 - HSVP policies and structures the scheme otherwise interest @ 55% per annum may be paid on earnest money after expiry of 6 months till date of payment.* | |

8. So far as the fourth question is concerned as to how many suits were allowed and how many came to be dismissed, the information provided by the appellant is as under:

> "*iv.) In respect to para 14(iv) of the order it is submitted that in total 30 civil suit instituted (26 in respect to impugned order dated 12.08.2016), (3 in respect to impugned order dated 30.07.2019) & (1 in respect to impugned order dated 07.01.2016) by the respondents and out of 30 civil suits, 12 civil suits were dismissed and 18 civil suits decreed by the Ld. Civil Judge. A chart in respect to each suit dismissed/decreed has been annexed with this additional affidavit.*"
>
> (emphasis supplied)

**i. Few Salient Features of the Policy of 1992**

9. Although we have given a fair idea as regards the distinguishing features of the Policy of 1992 and the Policy of 2016 as modified in 2018 referred to above, we are of the view that for better and effective adjudication of the issue in question we must highlight few salient features of the Policy of 1992. The salient features of the Policy of 1992 and in what manner the oustees were expected to apply for the plot in accordance with the policy, has been highlighted by the appellant in its written submissions as under:

***"ISSUANCE OF BROCHURE/ADVERTISEMENT FOR INVITING APPLICATIONS FOR ALLOTMENT OF PLOT UNDER OUSTEES QUOTA***

*(i)* ***BROCHURE/ADVERTISEMENT DATED 01.10.1992***

*The Petitioner Authority issued a brochure on 01.10.1992 for a free hold residential plot in Sector 19 Part – II and Sector 20 in Kaithal. The salient features are:*

*(i) The application is to be addressed to the Estate Officer, HUDA as:*

*"To*

*The Estate Officer,*
*Haryana Urban Development Authority,*
*Kurukshetra*

*Dear Sir,*

*I/we request that I/WE may be allotted a residential site as stated on reverse side in Sector 19(Part ii) & Sector 20. I/We agree to conform to abide by the terms and conditions as contained in the Haryana Urban Development Authority Act, 1977 and in the rules and Regulations applications thereunder. I/we own no residential plot/house in my / our name(s) or in the name(s) of my/our dependent family/member(s)/spouse in Kaithal Urban Estate if applying under General Category or any Urban Estate of Haryana if applying under any Gender Category or any Urban Estate of Haryana if applying under any Reserve Category.*

*Yours faithfully,*

*Signature of Applicant(s)"*

*(ii) Terms and conditions for the allotment of Residential Plot:*

*"1(i) Only such applications shall be deemed to be valid as are accompanied by specified earnest money equivalent to 10% of the tentative sale price in the form of cash receipt/demand draft in favour of the Estate Officer, Kurukshetra drawn at the place at which the application is deposited. However, Earnest Money shall not be accepted in cash by the Estate Officer, Kurukshetra, Bank branches will accept cash also.*

*(iii) The application form to be submitted was serial no. ed and the price of*

*PRICE RS. 5/- AT THE COUNTER*
*Rs. 15/- by Registered Post.*
*Indian Postal Orders are not accepted.*
*No responsibility of postal delay.*

*(iv) The last date for receipt of application is 01.10.1992.*

*(ii)* ***BROCHURE/ADVERTISEMENT DATED 22.12.1999***

*The salient features are:*

*(i) there is prescribed application with serial no. seeking allotment of residential plot.*
*(ii) The application is to be addressed in the prescribed format to the Estate Officer, HUDA.*
*(iii) Terms and Conditions:*

*"1(i) Only such applications shall be deemed to be valid as are accompanied by specified earnest money equivalent to 10% of the tentative sale price in the form of a cash receipt/demand draft in favour of the concerned Estate Officer, HUDA drawn at the place at which the application is deposited. However, earnest money shall not be accepted in cash by the concerned Estate Officer, HUDA Bank branches will accept cash also.*

*3. The price is tentative to the extent that any enhancement in the cost of land awarded by the Competent authority under the Land Acquisition Act shall also be payable proportionately, as determined by the Authority, within 30 days or in such specified period of its demand.*

***OTHER NOTES:***

*1. No interest shall be payable on the money for the applicant for the period for which the same remains lying with the authority.*

*3. An application without the prescribed earnest money shall not be entertained and is liable to be rejected outright.*

*4. The applicants under the reserved categories shall not be eligible without the requisite certificates/documents.*

*xxx xxx xxx*

*6. Affidavit, wherever required, shall be furnished on judicial stamp paper worth Rs. 3/- duly attested by a Magistrate 1st Class/Executive Magistrate.*

*7. Allotment of plots and all matters connected therewith shall be governed by the provisions contained in the HUDA Act and Rules /Regulations framed thereunder as amended from time to time.*

*8. Dispute if any regarding allotment related matters should be settled within the jurisdiction of the concerned Estate Officer, HUDA."*

*The price of the brochure mentioned as Rs. 20.00*

*(iii)* ***PUBLIC NOTICE / ADVERTISEMENT DATED 13.03.2025***

*(i) Oustees to apply alongwith application money Rs. 50,000/- for the concerned sector.*

*(ii) the claims of the oustees will be decided in terms of the policy dated 11.08.2016 and 08.05.2018.*

*(iii) The terms and conditions available on HSVP website.*

*1. Any land owner whose land is acquired prior to 10.09.1987 by Urban Estate Department are not eligible against the advertisement at hand for which separate advertisement has been issued.*

*3. As held by Hon'ble High Court in Rajiv Manchanda's case (supra), 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. Therefore, for deciding the claims of oustees the applicable policy would be policy dated 04.12.2015, 11.08.2016 and 08.05.2018 as per which only the entitlement and eligibility shall be decided.*

*4. the allotment shall be made on the current reserve price mentioned in the table attached and in case finalization of allotment takes time, for any reason in that eventuality bank rate of interest be charged till the date of allotment on the rate mentioned in the advertisement.*

*(v) It is pertinent to mention here that in regard to advertisement dated 13.03.2025 number of oustees have already applied online paying Rs. 50,000.00.*

*(vi) That earlier as per advertisement, the closing date was 31.03.2025 and now the same has been extended to 31.05.2025.*

*(vii) It is submitted that from the above, it is evident that there is a prescribed form of application with serial no. and the same is to be submitted with earnest money.*

*(True copies of the advertisement dated 01.10.1992, 22.12.1999 and public notice dated 13.03.2025 are being annexed marked as ANNEXURE A-7, Pg. 68-82.)*

*(viii) At the outset it is submitted that in regard to advertisement/brochure dated 01.10.1992 and 22.12.1999 any of the respondents did not submit any application as per prescribed format and even did not deposit the earnest money. Therefore, any application submitted by any of the respondents not in the prescribed form with earnest money cannot said to be submission of application and once they failed to comply with the mandatory condition of the policy/advertisement cannot claim entitlement of a plot under oustee policy."*

10. In addition to the aforesaid, the appellant has narrated the following facts as regards the applicability of the policy etc. The same reads thus:

*"The Petitioner Authority introduced a scheme whereby a plot is offered to the oustees whose land has been acquired. Size of the plot is decided as per criteria and the area of land acquired. The person whose land has been acquired may apply to the Estate Officer, concerned as and when oustees claim for sector are invited along with copy of Award,*

*Nakaljamabi or registry as the case may be alongwith 10 % earnest money.*

*(i) It is submitted that the petitioner Authority from time to time issued policies for the allotment of residential plots/ commercial sites to the land owners those have become oustees due to acquisition of their respective land. The relevant oustees policies in regard to the present batch of SLP's are as under:*

*Petitioner-HUDA vide Memo No. A-2-92/2076 dated 18.03.1992 (policy) decided to offer a plot to the Oustees in case where the land has been acquired (P-1 Pg. 31-33 with SLP No. 15148 of 2017 Paper Book). The relevant terms and conditions as mentioned in the said policy are as under:*

*(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 Landowners in that sector is acquired.*

*(ii) Oustees whose land acquired is:*

*(a) Less than 500 sq. yards would be offered a plot of 50 sq. yards.*

*(b) Between 500 sq. yds. And one acre would be offered a plot of 250 sq. yds.*

*(c) From 1 acre and above would be offered a plot of 500 sq. yds where 500 or where 500 sq. yds. Plots are not provided in the layout plan two plots of 250 sq. yds. Each may be given.*

*(iii) The above policy shall also apply in case there are no. 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 yds. Would be allotted in the joint name of the co-sharers.*

*(vi) Allotment of plots to the oustees will be made at the allotment rate advertised by the Haryana Urban Development*

*Authority for that sector, Land owners will be given compensation for their land which is acquired.*

*(vii) Claim 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.*

*(viii) ...*

*(A true copy of Memo dated 18.03.1992 is annexed herewith marked as ANNEXURE A-1, PG. 46-48)*

*(ii) It is submitted that the Petitioner Authority in its 55th meeting held on 29.01.1993 approved the procedure for inviting, scrutinizing and finally accepting the claims of oustees and further modified the earlier policy dated 18.03.1992 on 12.03.1993 (P-3 Pg. 40-41) to the effect that*

*(i) Benefit under the policy is not to be allowed to those oustees who have got residential/commercial plot from HUDA in the urban estate.*

*(ii) Benefit shall be restricted to one plot according to the size of the holding irrespective of the no. of co-sharers.*

*(A true copy of memo dated 12.03.1993 is annexed herewith marked as ANNEXURE A-2, pg. 49-50.)*

*(iii) It is submitted that after passing of the judgment by the Hon'ble High Court in the case of HUDA v. Sandeep Kumar, during the pendency of the SLP's issued a Memo dated 11.08.2016, i.e., another policy called as Policy of 2016.*

*(iv) In the said memo it was specifically mentioned that the judgment dated 25.04.2012 passed by the Hon'ble High Court in LPA No. 2096 of 2011 titled as HUDA v. Sandeep has been upheld by the Hon'ble Supreme Court vide order dated 06.03.2014 passed in SLP © No. 27256 of 2012 titled as HUDA v. Sandeep whereby the special leave petition has been*

*dismissed and as such the order passed by the Hon'ble High Court has been affirmed.*

*(v) It is submitted that in order to ensure the implementation of the directions as issued in the case of Sandeep Kumar (supra) by the Hon'ble High Court and to ensure settlement of the oustees claim the Memo dated 11.08.2016 was issued. The relevant salient features of the said memo dated 11.08.2016(Policy of 2016) are as follows:*

*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 claim for such allotment.*

*2. ... (amended subsequently vide memo dated 08.05.2018)*

*3. ...(amended subsequently vide memo dated 08.05.2018)*

*4. ....*

*5. The allotment of plot to the oustees will be made through draw of lots.*

*6. And oustee should have been the owner of the land as on the date when the notification under Section 4 of the Land Acquisition Act, 1894 is issued. Any subsequent purchase of land after said notification has been issued will not be entitled to make such application. Any application made by such purchaser shall entail automatic rejection of application and for feature of earnest money. However, the forfeiture of earnest money will be done only after giving opportunity of hearing to the defaulting applicant.*

*7. ...*

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

*9. ....*

*10. ....*

*11. ....*

*12. An oustee who has already got the benefit of allotment of plot from Haryana Urban Development Authority in any reserved category including under oustee policy shall not be eligible to seek allotment of plot under oustee quota.*

*13. A co-sharer in the land will not be eligible to claim allotment of plot if he had given a no objection certificate in favour of his co-sharer and on account of submission of such no objection certificate, a plot was allotted to such co-sharer in any previous flotation of plots for oustees*

*14. An oustee who has already been allotted a plot under the oustees policy on any previous occasion as a co-sharer and shall not be entitled to stake claim for allotment of plot under oustees quota.*

*15. ... (amended subsequently vide memo dated 08.05.2018)*

*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. ...*

*18. ...*

*(A true copy of memo dated 11.08.2016 is annexed herewith marked as ANNEXURE A-3, PG. 51-57)*

*(vi) It is submitted that the policy dated 11.08.2016 was clarified vide Memo dated 08.11.2016. (A true copy of memo dated 08.11.2016 is annexed herewith marked as ANNEXURE A-4 PG. 58-59.*

*(vii) It is submitted that the said policy dated 11.08.2016 was amended vide Memo dated 08.05.2018 where clause 2, 3, 11 and 15 of the guidelines dated 11.08.2016 amended and clause 19 was added. A true copy of memo dated 08.05.2018 is annexed herewith marked as ANNEXURE A-5 PG. 60-64.*

*(viii)It is submitted that the petitioner authority has already filed a comparative chart distinguishing the policies of 1992 and 2016 as asked for by this Hon'ble Court in Para 14(iii) of*

*its order dated 05.03.2025 with the additional affidavit filed on 25.03.2018 (A-2, pg 29-31 with the additional affidavit), however, another copy of being annexed herewith marked as Annexure A-6 pg. 65-67.*

*(ix) It is submitted that a bunch of special leave petition listed for hearing on 08.05.2017 and the Hon'ble court pleased to pass the order as:*

*"Delay condoned.*

*Shri Shyam Divan, learned senior counsel appearing on behalf of the petitioner submits that the petitioner will abide by the Policy framed on 11.08.2016 and every eligible oustee will be accommodated according to the said policy.*

*Issue notice restricted to the question of correctness of the general direction made by the High Court in granting allotments to all claimants who may not be similarly situated.*

*In the meantime, there shall be stay of execution."*

*(x) It is submitted that the said policy dated 11.08.2016 was formulated in view of the directions issued by the Hon'ble Court in the case of Sandeep Kumar and even the advertisement of public notice issued in 2025 inviting the applications for allotment of plots is also based on the policy dated 11.08.2016.*

*(xi) It is submitted that even in the judgment dated 22.11.2017 passed by the Hon'ble High Court of Punjab and Haryana at Chandigarh Manchanda vs. HUDA 2018 (2) PLR 422 there was issue in regard to the policy dated 11.08.2016. The said question NO. 14 is reproduced hereunder for ready reference:*

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

*(xii) It is submitted that the Hon'ble High court while passing the judgment dated 21.11.2017 dealt with all the clauses of the policy dated 11.08.2016 and upheld the same.*

*(xiii) It is submitted that in the case of HUDA vs. Sandeep Kumar & Ors. the Hon'ble High court while answering question No. 3 arrived at the finding that the condition for allotment of a plot for the reason that 75% of the land has been*

*acquired cannot be said to be unjustified and the landowner is the owner of the remaining land, the policy makers has found as a part of rehabilitation process and it to the object of rehabilitate.*

*(xiv) It is submitted that in regard to applicability of the oustees policy, the Hon'ble High court in the case of Rajiv Manchanda vs. HUDA passed in Writ Petition No. 22252 of 2016 in Para 72 held that the policy applicable to an oustee is 1 which is in force when an application is made pursuant to an advertisement issued by HUDA and in pursuance to which the plot is allotted.*

*In present case, the respondents have not submitted the applications seeking allotment of plot and the latest advertisement in 2025 has been issued where it has been mentioned that the policy dated 11.08.2016 will be applicable, therefore, in the case of respondents also the said policy will be applicable."*

**ii. <u>Institution of the Suits under Section 39 of the Specific Relief Act, 1963 for seeking Mandatory Injunction for Enforcement of The Policy</u>.**

11. It appears from the materials on record that suits were instituted with almost stereotyped plaints. One such plaint of Suit No. 538 of 2007 instituted by one Smt. Nirmala Devi w/o Shishpal Verma r/o Kaithal reads thus:

*"**<u>Suit For Mandatory Injunction</u>***

*It is submitted as under:*

*1. The plaintiff was the absolute owner in possession of the land measuring 225 sq. yards being 15/1518 share out of the total land mesuring 37 kanal 19 Marla comprised in Khewat no. 416 mn, khatoni No. 549 min, Rect. No. 117, Killa No. 6/2,*

*11, 12, 13/1, 13/2, 14/1, 14/2/1, 15/1 situated within the revenue estate of Patti Kaiseth seth Kaithal vide regd sale deed no. 2629/1 dated 21/9/89.*

*2. Hereinafter the land fully detailed and described in para no. 1 of the plaint shall be called the suit land for the aske of the brevity.*

*3. That the suit land is situate within the Municipla limits of Kaithal Distt kaithal.*

*4. That total land of plaintiff i.e. suit land fully mentioned in para no. 1 of the plaint has been acquired by defendants for the purose of devleopment of sector 19 & 20 of HUDA Kaithal as residential sector and plaitiff is not having any other land in sector 19 & 20 HUDA Kaithal.*

*5. That the plaintiff has been totally ousted from the suit land.*

*6. That the suit land has been acquired in the year 1992 by defendants for the purpose of developmnet of sector 19 & 20 of HUDA, Kaithal as residential sector.*

*7. That there is policy of the defendant vide memo no. 2/92/2082 dated 18.03.1992 and vide advertisement of defendants for the allotment of freehold residential house at Kaithal.*

*8. That the policy dated 18.03.1992 vide memo no. 2/92/2082 is reproduced as under:*

*i. The plots to the oustees would be offered in the land proposed to be acquired is under the ownership of oustees prior of the publication of the notification under section 4 of the Land Acquisition Act, and if 75% of the total land owned by the land owner in that sector is acquired.*

*ii. Oustees whose land acquired is:*

*a. Less than 500 sq. yards should be offered a plot of 250 yards.*

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

*c. From one acre and above should 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.*

*iii. That the above said policy shgall be applied in case there area no. of cosharers of the land which has been acuired, if the acquired land measures more than one care then for the purose of granting benefit under the policy, the determing factor should be the area owned by the each cosharers respectively, as per his/her share in the joint holding. In case the acquired land of the cosharers is less than one acre only one plot of 250 sq. yards would be allotted in the joint name of cosharers.*

*iv. That if the land of any landowner is released from acquisition, he would not be eligible to avail of any benefit under this policy (in respect of the area of land released).*

*v. That as per the policy, the oustee shall be entitled to develop a plot/plots the size of which would depend upon area of his acquired land subject to a maximum of 500 sq. yards. The oustee shall be entitled to this benefit under this policy only one the same town where the land of a person is situated located. However, in case where the land of a person sitauted in the same town is acquired in pockets at different times, the owner shall be entitled to claim the beneift on account of the entire land acquired at differne times, for the purposes of claiming the benfits under this policy.*

*vi. The claim of the oustees of allotment of plot under this policy shall be invited by the Estate Oficer, HUDA concerned before the sector is floated for sale*

*vii. The commercial sites/buildings are sold by the auctions. The sites/buildings be also allotted to the oustees on reserved price, as and when the auction of the said is held. While puttingh such sites/buildings to public auction to the oustees who wants to purchase the sites/building would represent before hand for them. However, if the area acquried of the commercial site is equivalent or less to the area of booth/shop cum flat being auctioned by HUDA, they may be given a booth/SCO site keeping in view the size of acqusition under this policy.*

*9. That the defendants have reserved the plot no. 175 to 200, of 500 sq. yards for the oustees in sector 20 HUDA Kaithal and plot nos. 930, 936, to 948, 778, 772 in sector 19(2) U/E Kaithal of 500 sq. yards for the oustees, and the plots, of 250 sq. yards*

*bearing no. 10, 20, 30, 40 , 120 ,130, 150, 160, 170, 263, 273 , 283, 300, 344, 354, 364, 369, 406, 434, 438, 516 has been reserved for the oustees in sector 20.*

*10. That in the year 1992, the application were invited from the plaintiff for release of free holder presidential develop plots HUDA Kaithal. And the plainitff in accordance with the policy full detailed in para no. 7 of the plaint duly applied for the release of freehold residential develop plot vide regd. Notice dated 19.12.2006 and vide reg. dated 19.12.2006 which have been duly received by the defendants.*

*11. That the defendants have already allotted the plot to one Ravinder Parkash and one Kavinder Parkash sons of Manohar Lal Jain under the similar circumstances as that of the plaintiff and which Act of the defendants is totally discriminatory.*

*12. That the defendants in spite of submissions as stated above, failed to take any action for rerlease of ree hold residential develop plot.*

*13. That the defendants again invited the application from the plaintiff for release of free hold residential develop plot in Jan, 2000 and the plaintiff duly applied with all the formalities.*

*14. That the plaintiff in accordance with the policy and advertisement fully detailed and described above, applied to the defendants for release of ree hold residential develpo plots vide red. Notices stated above which was duly received by the defendants.*

*15. That the total land of the plaintiff is 225 sq. yds. has been acquired and the plaintiff is entitled to the plot of 50 sq. yard as per the policy dated 18.03.1992 on the reserved price of 1992.*

*16. The plaintiff is not goverened by the policy dated 12.03.1993.*

*17. That the defendants are under legal obligations to allot the freehold residential plot of 50 sq. yard to the plaintiff as per the policy dated 18.03.1992 and for which the plaintiff represented the defendants many time as stated above, but defendants have failed to take any action and have finally refused and hence this suit.*

*18. That the cause of action has accrued to the plaintiff and against the defendants within the territorial jurisdiction on this learned court as therefore got the jurisdiction to entertain and try this suit.*

*19. That the value of the suit for the purposes of court fee and jurisdiction is Rs. 200/- and accordingly court fee is affixed.*

*20. That the plaintiff prays a decree for mandatory injection directing the defendants to deliver the free hold residential develop plot of 50 sq. yards as mentioned in Para no. 7 of the plaint be passed with costs in favour the plaintiff and against the defendants.*

*Any other relief to which plaintiff is found entitled to may also be granted to him."*

12. By and large identical written statements were filed by the appellant herein as defendants. One such written statement filed in the above referred suit reads thus:

*"* ***Written Statement on behalf of defendants.***

*The defendants submit as under:*

*Preliminary objections:*

*1. That the suit filed by the plaintiff is not maintainable in the eye of law. The plaintiff is not entitled to any plot as per oustees policies of HUDA.*

*2. That the plaintiff has no locus standi to file the present suit in the Hon'ble court because he has not deposited 10 % earnest money along with his application which was mandatory to be deposited as per brochure issued by HUDA for inviting applications for allotment of residential plots to the landowners whose land was acquired for floating the HUDA sector. In one Writ Petition No. 13548 of 2001 the Hon'ble High Court of Punjab and Haryana Chandigarh has held that such oustees who did not deposit the earnest money alongwith their application they have no legal right to claim allotment of plots and the rule of estoppels stands against them as they had waived the relinquished their right.*

*3. That the suit of the plaintiff is time barred.*

*Reply on Merits:*

*1. That para no.1 of the plaint relates to description of land which is a matter of record. The plaintiff be directed to prove the alleged facts by cogent evidence.*

*2. That para no.2 of the plaint needs no reply.*

*3. That para no.3 of the plaint is wrong and denied. The plaintiff be directed to prove the alleged facts by cogent evidence.*

*4. That para no.4 of the plaint is wrong hence denied.*

*5. That para no.5 of the plaint is wrong and denied and not admitted to be correct.*

*6. That para no.6 of the plaint is a matter of record.*

*7. That para no.7 of the plaint is also a matter of record.*

*8. That para no.8 of plaint along with its sub clauses (i) to (vii) are matter of record, needs no reply.*

*9. That para no.9 of the plaint is also matter of record and needs no reply.*

*10. That para no.10 of the plaint is wrong and denied. The plaintiff did not deposit the earnest money along with his application, so he has no legal right to claim the allotment of plot and he had waived and relinquished his right.*

*11. That para no.11 of the plaint is wrong and denied. The case of the plaint is not similar as that of Ravinder Parkash mentioned in this para.*

*12. That para no.12 of the plant is wrong and denied. The complete and detailed reply has already been given in above in pre objection same may kindly be read as part of reply of this para.*

*13. Para no.13 of the plant is wrong and denied.*

*14. That para no.14 of the plaint is wrong and denied. The plaintive has not deposited the 10% money with his application, so he has waived his right if any.*

*15. The para no.15 of the plaint is a matter of record. The plaintiff be directed to prove the alleged facts by cogent evidence.*

*16. Para no.16 of the plant is wrong and denied.*

*17. Para no.17 of the plant is wrong and denied. The plaintiff is not entitled to any free hold residential plot as he had waived and relinquished his right as he had no deposited the 10 % earnest money with the application form.*

*18. Para no.18 of the plant is wrong and denied. The plaintiff has got no cause of action against the defendants.*

*19. That para no.19 of the plaint is legal needs no reply.*

*20. That para no.20 of the plaint is wrong and denied. The suit of the plaintiff is against law and facts, false and frivolous the same may kindly be dismissed with special costs."*

(emphasis supplied)

13. Thus, what is discernible from the averments made in the written statement is that the plaintiffs failed to deposit 10 per cent of the earnest money along with an appropriate application addressed to the authority concerned in accordance with the Policy of 1992. In the absence of any application with deposit of 10 per cent earnest money the benefits of the Policy of 1992 could not have been extended. Such was the stance of the appellant herein as defendants before the trial court.

14. On the other hand, the case of the plaintiffs before the trial court was that it was not mandatory to deposit 10 per cent of the earnest money.

However, the fact remains that the suits came to be instituted almost after a period of fifteen years from the date of the Policy of 1992.

**iii. <u>Impugned Judgment of the High Court</u>**

15. The High Court in its impugned judgment took the view that the entire controversy could be said to be covered by the decision of this Court rendered in the case of ***Brij Mohan*** (supra) and the Full Bench decision of the Punjab and Haryana High Court in ***Jarnail Singh*** (supra). Saying so, the High Court though fit to dismiss all the Second Appeals thereby affirming the original decree passed by the trial court in favour of the plaintiffs (oustees) & some cases the judgment and order passed by the First Appellate Court allowing the appeals filed by the original plaintiffs.

16. However, what is important for us to take notice of something in the impugned judgment are the submissions canvassed by the learned Advocate General, State of Haryana. The High Court in its impugned judgment has recorded the submissions canvassed by the learned Advocate General as under:

> *"Mr. B.R. Mahajan, learned Advocate General, Haryana, assisted by Mr. Deepak Balyan, Advocate, in support of grounds of appeal has raised the multifold arguments which reads thus:*
>
> > *i) <u>the pre-requisites of the policy dated 18.03.1992 had not been fulfilled by the plaintiff for allotment of a plot under the oustee policy as the court below has not gone</u>*

*into that question and without any reason ordered for allotment of plot to the plaintiff.*

*ii) the court below has filed to take into consideration the fact that the case of the plaintiff was not considered due to non-compliance of Rule 5 of Haryana Development (Disposal of Land and Buildings) Regulations 1978 (hereinafter referred to as 1978 Regulations) which deals with the procedure in case of sale or lease of land or building by allotment, in essence, the purchaser is required to make an application to the Estate Officer concerned and it should be accompanied by 10% of the price/premium in the form of a demand draft table to the Estate officer.*

*iii) The intended allottees under the oustee policy had not fulfilled the essential terms and conditions of the advertisement, brochure and 1978 Regulations. In the instant case, there was no advertisement against which the plaintiff had sought allotment of the plot."*

(emphasis supplied)

17. Thus, the main plank of the submission canvassed on behalf of the State was that the oustees had failed to abide by the essential terms and conditions of the advertisement, brochure of the 1978 Regulations etc. In short, the argument before the High Court was that the oustees had failed to duly apply in a prescribed format with the Estate Officer in accordance with the Scheme with deposit of 10 per cent price/premium in the form of a demand draft payable to the Estate Officer.

18. In the aforesaid context, we may only observe that none of the submissions canvassed by the State have been dealt with by the High Court in its impugned judgment. When it was the specific case of the State that no applications in the prescribed format were preferred by the oustees with 10 per cent deposit of the requisite amount then it was expected of the High Court even while

considering Second Appeal under Section 100 of the CPC to look into this aspect of the matter. Even the trial court does not seem to have considered this aspect of the matter including the First Appellate Court.

19. It was also brought to our notice by the learned counsel appearing for the respondents (oustees) that allotment letters were issued at the rate prescribed in accordance with the 1992 Policy subject to the outcome of the Special Leave Petitions and once such allotment letters are issued then there is no question in saying that the oustees had failed to apply in accordance with the terms and conditions of the scheme. In what circumstances such allotment letters were issued by the Estate Officer has been explained by the appellant in its written submissions. The same reads thus:

> *"16. It is submitted that after passing of the order by Ld. District Judge and Ld. Civil Judge, some of the respondents filed Execution Petition before the Executing court for the execution of the order passed by the Trial court.*
>
> *17. It is submitted that the Ld. Civil Judge issued warrant of arrest of the Estate Officer of the Petitioner Authority. The said letter is reproduced hereunder for ready reference:*
>
> *"To*
>
> *Director General of Police*
>
> *Panchkula (Haryana)*
>
> *Whereas the Judgment Debtor Lajpat Rai S/o Shiv Dayal R/o Kaithal, Tehsil and Distt. Kaithal was adjudged by a decree of the Court in Suit No. RBT382/2007 on 11.11.2011 to order that the suits of plaintiffs are decreed with costs to the effect that the plaintiffs of CS -I and C-II are held entitled for separate freehold residential plots*

*measuring 250 sq. yards each and the plaintiffs or CS-I to CS-III are liable to deposit the prices of the respective plots as were applicable at the time of floating of Sec 19, Urban Estate, Kaithal formalities for allotment of plots be completed by defendants within two months from the even date under initiation to plaintiffs in writing. But defendants fail to comply all the condition which were imposed on them, executing this process to bring the said defendant before the court with all convenient speed.*

*You are hereby directed to arrest the said Estate Officer HUDA and produce before me. Here fail not. If the Estate Officer HUDA fulfil the above said condition, he shall not be arrested. Youa re further commanded to return this warrant on or before the 31.05.2019 with an endorsement certifying the day on which and manner in which it has been executed or the reason why it has not been executed.*

*Given under my hand and the seal of the court, this 28.05.2019.*

*Amit Sharma*

*Civil Judge (Senior Div) Kaithal"*

*It is submitted that the application have not submitted in the prescribed format and even the earnest money was not paid but due to the order passed by the Civil Judge in regard to the arrest of the Estate Officer, the petitioner authority under compulsion issued allotment letter at the current rate subject to outcome of The special leave petitions pending before this Hon'ble Court. (A true copy of the one of such applications arrest warrant and allotment letter is annexed herewith marked as Annexure A-12 pg. 126-132.*

*18. It is submitted that similarly in some other cases also, where the application has not been submitted in the prescribed format, the earnest money has not been paid but since, the suit has been decreed therefore, the Execution petition filed and in Execution petition since the Ld. Civil judge issued the warrant of arrest, therefore the Petitioner Authority under compulsion issued allotment letter at the*

*current price subject to outcome of the special leave petition."*

**iv. Filing of the Special Leave Petitions before this Court**

20. What is now important for us to note is the order passed by a coordinate bench dated 08.05.2017 at the time of issuing notice. The order reads thus:

> *"Delay condoned. Shri Shyam Divan, learned senior counsel appearing on behalf of the petitioner submits that the petitioner will abide by the Policy framed on 11.08.2016 and every eligible oustee will be accommodated according to the said Policy. Issue notice restricted to the question of correctness of the general direction made by the High Court in granting allotments to all claimants who may not be similarly situated. In the meantime, there shall be stay of execution."*
>
> (emphasis supplied)

21. Thus, the appellant made itself explicitly clear before this Court that it would abide by the policy framed on 11.08.2016 and every eligible oustee would be accommodated according to the said policy. On such statement being made, this Court issued notice restricted to the question of correctness of the general directions issued by the High Court in its impugned judgment as regards granting allotments to all claimants who may not be similarly situated. This Court also stayed the execution of the decree.

22. The controversy before us as on date is in a limited compass, i.e., whether the respondents as oustees are entitled to the benefit of the scheme of 1992 or the scheme of 2016 as further modified in 2018 referred to above.

## B. SUBMISSIONS OF THE PARTIES

### i. Submissions on behalf of the Appellants

23. Ms. Aishwarya Bhati, the learned A.S.G., appearing for the appellants vehemently submitted that only those oustees are entitled to seek allotment of a plot under the policy who had filed appropriate application in a prescribed format, seeking allotment of plot with the deposit of the requisite earnest money. As regards this submission of Ms. Bhati, the following has been highlighted in the written submissions filed by the appellant:

> *"(i) The Petitioner Authority issued advertisement inviting applications for allotment of plot under oustees quota in 1992 and 2000 whereas it has been mentioned in the preceding paras and as is evident from the documents placed on record that the application was to be submitted in the prescribed format alongwith the earnest money.*
>
> *(ii) It is submitted that from the perusal of the brochure so issued in 1992 and in 2000, it is evident that the application form is to be purchased upon payment as the same is serial no. ed also. Not only this, even in the brochure itself, the letter is to be addressed to the Estate Officer for the submission of the*
>
> *(ix) It is submitted that even in the procedure so prescribed by the Petitioner Authority in respect to allotment of plot under oustees quota, there is a condition of the inviting applications to be submitted in the prescribed format."*

24. The second submission canvassed by Ms. Bhati is as regards the price of the plot under the policy. This argument has been elaborated in the following manner:

> *"(i) It is submitted that as far as price of plot so allotted under oustees quota is concerned, the Hon'ble High Court in the case of Rajiv Manchanda vs HUDA in question no. 8 and that in a case where the land was acquired in 1992 the oustees is liable to pay the price fixed in the advertisement by which the applications are invited and pursuant to which advertisement the plot is actually allotted to the oustees.*
>
> *(ii) It is submitted as far as the present specially petitions are concerned the respondents as mentioned here in above failed to submit the application in the prescribed format and even failed to deposit the earnest money therefore in fact the application submitted if any cannot be set to be submission of application as per advertisement/policy*
>
> *(iii) It is submitted that in the case of HUDA and ors. v. Sandeep and Ors. decided on 25.04.2012, the Hon'ble Court while deciding the issue in regard to the price to be charged under Question No. 8 held that the price that can be charged is the price prevailing at the time of allotment. The extract from the judgement reads as under:*
>
> > *"17. Where there is a scheme but it does not regulate the allotment price it may be possible for the court to direct the State Government/Development Authority to allot plots to land-losers at a reasonable cost, in special and extraordinary circumstances, it may also indicate the manner of determining the allotment price. But where the scheme applicable specifies the price to be charged for allotment its terms cannot be ignored. If any land loser has any grievance in regard to such scheme, he may either challenge it or give a representation for a better or more beneficial scheme. But he cannot as the code to ignore the terms of an existing or prevailing scheme and demand allotment at cost price."*

*(iv) It is submitted that the judgment passed by this Hon'ble court in Brij Mohan vs. HUDFA 2011(2) SCC 29 is of no help to the oustees. Two questions arose for consideration in that case before this Hon'ble Court.*

*In respect of first question i.e. whether HUDA should charge only the actual land cost plus development charges for the plots allotted to an oustee and not the market price/normal allotment price; the court returned a finding that the Land Acquisition Act, 1894 contemplates only benefits like solatium, additional amount and higher rate of interest to the oustees and not allotment of plots at cost p rice. HUDA or the State Government does not have any scheme providing for allotment of plots at actual cost of oustees. Therefore, it is not possible for the Court to direct the State Government or the Development Authority to allot plots to the oustees at a reasonable cost.*

*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 rate when the sector is first floated for sale. As a matter of fact, the norma 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.*

*(v) It is submitted that even otherwise in the case of Brij Mohan the applications submitted by the applicants but in present case no application in the prescribe format with earnest money has been submitted therefore it cannot be said that the respondents submitted any application in view of this the case of Bridge Mohan is distribution from the facts and circumstances of the present case.*

*(vi) It is submitted that admittedly none of the respondent have deposited the earnest money as per the advertisement of 1992 and/or 2004 cannot claim the price as per 1992.*

*(vii) it is submitted that in view the above and as per the policy in existence the respondents cannot claim the price of 1992.*

*(viii) It is submitted that the Hon'ble court in the case of Rajiv Manchanda v. HUDA while passing the judgment dated 22.11.2017 in Civil writ petition no. 22252 of 2016 while answering the question no. 8 in regard to fixation of price in para 57 held that an oustee including 1 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 oustee and pursuant to which advertisement of the plot is actually allotted to the oustee.*

*(ix) It is submitted that since, no application in the prescribed format has been submitted by any of the respondents and even otherwise the earnest money has not been paid therefore, the respondents cannot ask for any price of 1992 especially when the no application has been submitted or if any application has been submitted, the same is not in the prescribed format with the earnest money which was the precondition for entitlement of allotment of plot.*

*(x) It is submitted that when the respondents have not submitted the applications in the prescribed format that too without the earnest money therefore, the respondents are not entitled for any relief and it will amount to wind full gain if the respondent to have been fully compensated in accordance with statutory scheme for the land acquired for public purpose by the state if despite have not paid a single penny if they are giving their plot as per the 1992 rates.*

*(xi) It is submitted that as it has been mentioned hereinabove the petitioner authority has already issued public notice inviting the applications from the oustees and the application is to be submitted online with Rs.50,000.00. It is submitted that any of the respondent can submit the application if so desired to avail the benefit of oustees policy dated 11.08.2016."*

25. The third submission of Ms. Bhati is that the respondents could not have instituted a civil suit after a period of almost 14 to 20 years of passing of the final award. She would submit that the suits filed by the individual respondents under Section 39 of the Specific Relief Act, 1963 were not maintainable, more particularly, when none of the respondents had applied for the plot in a prescribed format with deposit of earnest money. This argument has been further elaborated as under:

> *"(i) It is submitted that admittedly the acquisition proceedings concluded in 1992 upon passing of the award and the State Government issued and advertisement inviting the application for allotment of plot under the oustees quota in 1992 itself but the respondents instituted Civil suit after 14-20 years which is barred by Article 113 of the Limitation Act where the limitation of 3 years for the institution of the suit has been provided*
>
> *(ii) It is submitted that the respondents field to comply with the terms and conditions as a numerated in the advertisement issued from time to time inviting the applications for allotment of plot under out these Kota their food the suit instituted under section 39 of Specific Relief Act for mandatory injunction not maintainable and the Ld. Civil Court dismissed one civil suits on the ground of maintainability and limitation.*
>
> *(iii) It is further submitted that even the Appellate court in some of the cases dismissed the appeals affirmming the order pass by the Civil judged dismissing the Civil suit.*
>
> *(iv) It is submitted that there is bar under section 50(2) of Haryana Development Authority Act, 1977 to the jurisdiction of the Civil Court to entertain any suit or proceeding in any matter*
>
> *(v) It is submitted that the Hon'ble High Court in Regular Second Appeal being RSA No. 3833 of 2010 titled as HUDA vs. Kashmiri Lal vide its judgment dated 06.08.2012 arrived*

*at the conlusion that the suit is barred by limitaion because the plaintiff applied for the allotment of plot in the year 1992 and the suit was filed after 15 years.*

*(vi) It is submitted that the Special leave petitoins preferred against he said order dated 06.08.2012 being SLP C NO. 8766-8767 of 2013 titled as Kashmiri lal vs. EO HUDA dismissed by this Hon'ble court vide order dated 15.07.2016.0*

*(vii) It is submitted that suit for mandatory injunction under Section 39 was not maintainable as there was no breach of an obligation. Ld. Civil judge ought not to have directed to allot a plot especially when the terms and conditions in regard to submission of application in the prescribed format with earnest money has not been complied with and further there is a bar of jurisdiction in the Act itself.*

*(viii) It is submitted that this Hon'ble court in the caose State of Kerala vs. UOI 2024 (7) SCC 183, has discucsed about section 39 of the Specific Relief Act and held that there should be test in regard to (i) Prima facie case (ii) balance of convenience (iii) irreparable injury.*

*In the present case, although there was no prima facie case, yet the Ld. Civil Judge erroneously decreed the Civil Suit in some of the cases, whereas in other similar cases the Civil Suit so instituted were dismissed."*

26. The fourth submission of Ms. Bhati is as regards the status of a co-sharer in respect to allotment of plot under the scheme. This submission has been elaborated in the following manner:

*"(i) It is submitted that in regard to the allotment of plot under oustees quota to the co-sharer it is submitted that initially in the policy dated 18.03.1992 wherein clause (iii) of the said policy it is mentioned that in case there are no. of co-sharer of the land which has been acquired and if the acquired land measures more than 1 acre than for the purpose of granting benefit under this policy the determining factor would be the area of co-sharer respectively as per his/her shareholding and*

*in case the acquired land of the co-sharer less than only one plot of 200 sq. yards in the joint name of co-sharers.*

*(ii) It is submitted that subsequently the said policy dated 18.03.92 was amended and the same was modified to the effect that "benefit under oustees policy shall be restricted to 1 plot according to the holding irrespective of co-sharers".*

*(iii) It is submitted that in the policy dated 18.03.1992 in regard to offering of the plot to the land owners it was mentioned that:*

*(a) Less than 500 sq. yards would be offered a plot of 50 sq. yards.*

*(b) Between 500 sq. yds. And one acre would be offered a plot of 250 sq. yds.*

*(c) From 1 acre and above would be offered a plot of 500 sq. yds. Where 500. Where 500 or where 500 sq. yds. Plots are not provided in the layout plan, two plots of 250 sq. yds. Each may be given.*

*(iv) It is submitted that in the policy dated 11.08.2016 in clause 8 about the eligibility of co-sharer it is mentioned that the eligibility of each co-sharer for allotment of plot under oustees quota shall be determined on the basis of individual holding i.e. each co-sharers will be entitlement to seeking allotment of plot on the basis of his owned individual holding. Further in Clause 13 of the said policy in regard to the eligibility of co-sharer who has given no objection certificate in his co-sharer it has been mentioned that a co-sharer in the land will not be eligible to claim allotment of plot if had given a no objection certificate in favour of the co-sharer and on account of submission of such no objection certificate a plot was allotted such co-sharer in prevailing flotation of plot for the oustees. It has also been made in case of any previous occasion a plot under the oustees policy has been allotted in that a co-sharer will not be entitled for allotment of plot under oustees quota."*

27. In the last, Ms. Bhati invited our attention to few relevant provisions of law. The same read thus:

*"(i) The Specific Relief Act, 1963*

*"Section 39. Mandatory injunction – When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the Court is capable of enforcing, the Court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."*

*(ii) Limitation Act*

| | | | |
|---|---|---|---|
| *Article 113* | *Any suit for which no period of limitation is provided elsewhere in this Schedule* | *Three years* | *When the right to sue accrues* |

*Section 3: Bar of limitation – (1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted appeal preferred, and application made after the prescribed period shall be dismissed, although limitation has been set up as a defence.*

*(2) For the purposes of this Act-*

*(a) A suit is instituted:*

*(i) in an ordinary case, when the plaint is presented to the proper officer;*

*(ii) in the case of a pauper, when his application for leave to sue as a pauper is made; and*

*(iii) in the case of a claim against a company which is being wind up by the court, when the claimant first sends in his claim to the official liquidator;*

*(b) any claim by way of a set off or a counter claim, shall be treated as a separate suit and shall be deemed to have been instituted:*

*(i) in the case of a set off, on the same date as the suit in which the set off is pleaded;*

*(ii) in the case of a counter claim, on the date on which the counter claim is made in court;*

*(c) an application by notice of motion in a High Court is made when the application is presented to the proper officer of that court.*

*(iii)* ***HUDA Act and Rules.***

*"Section 50 of HUDA Act, 1977.*

*(i) Save as of otherwise expressly provided in the Act, every order passed or direction issued by the State government or order passed or notice issued by the Authority or its officer under this Act shall be final and shall not be questioned in any suit or legal proceeding.*

*(ii) No Civil Court shall have the jurisdiction to entertain any suit or proceeding in respect of any matter the cognizance of which can be taken and disposed of by the authority empowered by this Act or the rules or regulations made thereunder.*

*Regulation 5 of Haryana Urban Development (disposal of Land and Buildings) Regulations 1978, which lays:*

*"5. Procedure in case of sale or lease of land or building by allotment:*

*(i) In the case of sale or lease of residential and industrial land or building by allotment the intending purchaser shall make an application to the State Officer concerned in the prescribed form (annexed to these regulations) as given in Forms A and B respectively.*

*(ii) No application under sub-regulation (1) shall be valid unless it is accompanied by such amount may be determined by the Authority, which shall not be less than ten per cent of the price/premium in the form of a demand draft payable to the Estate Officer, and drawn on any scheduled bank situated at the local place of the Estate Officer concerned or any other such place as the Estate Officer may specify"*

*(iii) xxxx"*

28. In such circumstances referred to above, Ms. Bhati very fairly submitted that although the suits were liable to be dismissed yet the appellant is ready and willing to allot the plots to the respondents if eligible otherwise, in accordance with the scheme of 2016.

29. She would submit that the appellant has already issued a public notice inviting appropriate applications from the oustees and such applications are to be submitted online with payment of Rs. 50,000/- towards earnest money.

30. What we have been able to gather from the aforesaid is that allotment letters were issued to the oustees but at the revised rate of Rs. 1122 per sq. yd. in accordance with the 2016 policy.

31. In such circumstances referred to above, Ms. Bhati submitted that this Court may pass an appropriate order, directing the appellant to consider the applications that may be filed online in accordance with the policy of 2016.

**ii. <u>Submissions on behalf of the Respondents</u>**

32. Dr. Surender Singh Hooda, the learned senior counsel appearing for the respondents in SLP No. 4787 of 2018 vehemently submitted that this Court may not interfere or rather disturb the concurrent findings recorded by three courts below. So far as the entitlement of the oustees to claim plots in accordance with the scheme of 1992 is concerned, the entire controversy is squarely covered by a decision of this Court in the case of ***Brij Mohan and***

***Others v. Haryana Urban Development Authority*** reported in (2011) 2 SCC 29.

33. He further submitted that the issue as regards restricting the allotment of one plot to the oustees who have a joint holding came to be concluded by a Full Bench of the High Court of Punjab and Haryana in the case of ***Jarnail Singh & Ors. vs. State of Punjab*** reported in (2010) 10 P&H CK 0212.

34. Dr. Hooda submitted that so far as his matter is concerned, the same is distinguishable on facts with the other connected matters. He pointed out that his client had submitted an application with the appellant authority for allotment of plot under 1992 scheme. Even a draw was held where the application of his client's father was cleared successfully and a plot in Sector 20 was earmarked.

35. He further pointed out that the suit filed by his client came to be decreed. The decree came to be affirmed right up to the High Court. The principal argument of Dr. Hooda is that if the policy of 2016 is applied it would impose a substantial financial burden on the oustees.

36. Relying on the decision of this Court rendered in ***Brij Mohan*** (supra) referred to above, he would submit that the oustees are entitled to allotment of plots in accordance with the policy that was floated and advertised at the time of the land acquisition proceedings i.e. 1992 and not as per any subsequent revised policy.

37. Mr. Rajiv Raheja, the learned counsel appearing for the respondents in SLP No. 20614 of 2017 and connected matters submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment and order. His principal argument is that the policy of 2016 cannot be applied with retrospective effect.

38. Mr. Sidharth Mittal, learned counsel appearing for the respondents in SLP No. 20640 of 2017 would submit that so far as the price of allotment of plots is concerned, the same has been settled by this Court in ***Brij Mohan*** (supra).

39. The sum and substance of the submissions canvassed on behalf of the respondents is that they are ready and willing to deposit the requisite amount for the purpose of allotment of plots in accordance with the policy of 1992. In short, their case is that they are ready and willing to deposit the amount of Rs. 863 per sq. yd. but the demand of the revised rate of Rs. 1122 per sq. yd. is not tenable in law.

40. In such circumstances referred to above, learned counsel appearing for the respondents prayed that there being no merit in these appeals those may be dismissed and the impugned judgment and order passed by the High Court may be affirmed.

## C. ANALYSIS

41. Having heard the learned counsel appearing for the parties and having gone through the materials on record the only question that falls for our consideration is whether the respondents herein are entitled to claim plots as oustees at the rate prescribed by the 1992 policy or at the rate prescribed by the revised policy of 2016?

42. Before adverting to the rival submissions canvassed on either side, we must look into the two judgments; one of this Cout in ***Brij Mohan*** (supra) and the other of the Full Bench of the Punjab and Haryana High Court in the case of ***Jarnail Singh*** (supra).

43. In ***Brij Mohan*** (supra), this Court dealt with the following two questions:

(i) Whether HUDA should charge only the actual land cost plus development charges for the plots allotted to oustees/land-losers, and not the market price/normal allotment price?

(ii) What meaning should be ascribed to the words 'normal allotment rate' used in the scheme for allotment to oustees?

44. In ***Brij Mohan*** (supra), this Court elaborately interpreted the policy dated 18.03.1992 and answered the aforesaid two questions as such:

> *"10. No doubt, the contention that allotment of plots to land losers should be at actual cost (acquisition cost of land plus*

*development cost), appears to be reasonable and attractive. That should be the ultimate goal in a changing scenario favouring acquisitions which are land loser- friendly. The arguments of the appellants do certainly make out a case for such a scheme to create a better settlement and rehabilitation policy in regard to land acquisitions. If there was any statutory provision in the Land Acquisition Act, 1894 (`Act' for short) or other scheme, providing for allotment at cost price, a land loser could certainly claim allotment in terms of the scheme. But the Statute contemplates only benefits like solatium, additional amount and higher rate of interest to the land losers and not allotment of plots at cost price. Nor does the State Government or HUDA have any scheme providing for allotment of plots at actual cost to land losers. We are informed that State of Haryana is now proposing to introduce a more attractive and land-loser friendly rehabilitation and resettlement policy, which contemplates allotment of bigger residential/commercial/industrial plots to land losers and oustees. But that is for the future.*

*11. Where there is a scheme but it does not regulate the allotment price, it may be possible for the court to direct the State Government/Development Authority to allot plots to land losers at a reasonable cost, and in special and extraordinary circumstances, it may also indicate the manner of determining the allotment price. But where the scheme applicable specifies the price to be charged for allotment, its terms cannot be ignored. If any land loser has any grievance in regard to such scheme, he may either challenge it or give a representation for a better or more beneficial scheme. But he cannot ask the court to ignore the terms of an existing or prevailing scheme and demand allotment at cost price. The scheme of HUDA contemplates allotment of plots only in terms of the scheme, that is at normal allotment rates. This benefit is extended in addition to the benefits under sections 23(1A), 23(2) and 28 of the Act, and therefore the scheme provides for allotment at normal allotment rate. Necessarily, the allotment and the price to be charged, will have to be strictly in accordance with such HUDA Scheme. In this case the HUDA scheme requires the land loser-allottee to pay the normal allotment rates for the plots to be allotted to them under the scheme. Therefore, a land loser cannot claim allotment of a plot at acquisition cost of land plus*

*development cost or at any other lesser price. The decision in Hansraj H. Jain was a case where the scheme did not provide for any allotment price, and the price demanded was Rs.13,200/- per sq.m. as against the compensation of Rs.4 per sq.m. which in effect was 3300 times the acquisition price. It was on those peculiar facts and circumstances, this court thought it fit to direct the respondents therein to adopt the acquisition cost plus development cost as the allotment price. That principle will not apply where there is a specific scheme which provides the rate of allotment.*

*Re : Question (ii)*

*11. As noticed above, the scheme requires the allottees under the scheme for land-losers/oustees, to pay the normal allotment rates for the allotted plots. The question is what is the meaning of the term `the normal allotment rate'. No doubt, the term would ordinarily refer to the allotment rate prevailing at the time of allotment. If an acquisition is made in 1985 and the developed layout in the acquired lands is ready for allotment of plots in 1990, and allotments are made in the years 1990, 1991, 1992, 1993, 1994 and 1995 at annually increasing rates, a land-loser who is allotted a plot in 1990 will naturally be charged a lesser price. But if his application is kept pending by the Development Authority for whatsoever reason and if the allotment is made in 1992, he may have to pay a higher price; and if the allotment is made in 1995 he may have to pay a much higher price. The question is whether any discrimination should be permitted depending upon the whims, fancies and delays on the part of the authority in making allotments. To take this case itself, the application for allotment was made in 1990. On 9.9.1991, HUDA advertised the residential plots in the sectors developed from the acquired lands for allotment, wherein the allotment rate was shown as Rs.1032 per sq.m. (Rs.863/- per sq.yd) for plots of 300 sq. m. In the year 1993, the allotment price was increased to Rs.1342/- per sq.m. (Rs.1122/- per sq.yd.) and the appellants are required to pay the 1993 price instead of paying the rate in vogue when the layout was ready for allotment. Should the land loser who promptly made the application in 1990 be made to suffer, because of the inaction on the part of HUDA in making the allotment? We get the answer in the HUDA scheme itself."*

45. In ***Jarnail Singh*** (supra), the Full Bench of the Punjab and Haryana High Court held that every co-sharer is entitled to a plot as per his entitlement, although his land is joint with others. The Full Bench held that every co-sharer has an independent right to allotment to plot under the oustee quota. It is the share of the co-sharers which is acquired, and the compensation is paid independently to all co-sharers and the entire compensation is not paid to one co-sharer on behalf of all. In such circumstances, a co-sharer is entitled to separate plot as per his share, if eligible, in accordance with law. In ***Jarnail Singh*** (supra), the Full Bench struck down Clause 6(V) of the Policy dated 26.09.1994 and held that it had no reasonable nexus with the object to be achieved, as the basic purpose of the policy of HUDA is to rehabilitate the oustees.

46. The Writ Petitions ultimately came to be disposed of with the following orders and directions:

> "*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 re-settlement;*
>
> *2. Clause 6(v) of the Policy dated 26.9.1994 is struck down as it has no reasonable nexus with the objective to be achieved;*
>
> *3. A co-owner, as per the eligibility criteria fixed by the State Government, shall be entitled to be considered for allotment of plot irrespective of the fact that his holding of land is joint with other co-owner;*
>
> *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*

*6. That till such time an appropriate policy is framed, the State Government or its instrumentalities shall not allot plots under the oustees quota."*

**i. <u>Dictum as laid by this Court in Brij Mohan (Supra) and the Ratio Decidendi</u>.**

47. This Court has rendered plethora of decisions explaining how to cull out the ratio decidendi of a judgment and identify the principles which have precedential value. It is now well settled that not every observation in a judgment of this Court is binding as precedent. Only the ratio decidendi or the propositions of law that were necessary to decide on the issues between the parties are binding. Observations by the judge, even determinative statements of law, which are not part of her reasoning on a question or issue before the court, are termed *obiter dicta*. Such observations do not bind the Court. More simply, a case is only an authority for what it actually decides.

48. A Constitution Bench of this Court in ***Islamic Academy of Education v. State of Karnataka*** reported in 2003 INSC 391 pithily observed:

*"2. ...The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer*

*to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment. …"*

(emphasis supplied)

49. In ***Secunderabad Club* v. *CIT*** reported in 2023 INSC 736 this Court, had the occasion to delineate how to cull out the *ratio decidendi* of a judgment and identify the principles which have precedential value. This Court observed:

*"14….According to the well-settled theory of precedents, every decision contains three basic ingredients:*

*(i) findings of material facts, direct and inferential. An inferential finding of fact is the inference which the judge draws from the direct or perceptible facts ;*

***(ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and***

*(iii) judgment based on the combined effect of (i) and (ii) above.*

*For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision, for, it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute.* ***However, for the purpose of the doctrine of precedent, ingredient (ii) is the vital element in the decision. This is the ratio decidendi. It is not everything said by a judge when giving a 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****."*

(emphasis supplied)

50. Further, a simple test that has been invoked by this Court to determine whether a particular proposition of law is to be treated as the *ratio decidendi* of a case is the "inversion test" formulated by Professor Eugene Wambaugh. The test mandates that to determine whether a particular proposition of law is part of the *ratio decidendi* of the case, the proposition is to be inversed. This means that either that proposition is hypothetically removed from the judgment, or it is assumed that the proposition was decided in reverse. After such removal or reversal, if the decision of the Court on that issue before it would remain the same then the observations cannot be regarded as the *ratio decidendi* of the case.

51. In ***State of Gujarat v. Utility Users' Welfare Assn.*** reported in (2018) 6 SCC 21, the test was explained thus:

> ***"113.*** *In order to determine this aspect, one of the well-established tests is "the Inversion Test" propounded inter alia by Eugene Wambaugh, a Professor at The Harvard Law School, who published a classic text book called The Study of Cases [ Eugene Wambaugh, The Study of Cases (Boston: Little, Brown & Co., 1892).] in the year 1892. This textbook propounded inter alia what is known as the "Wambaugh Test" or "the Inversion Test" as the means of judicial interpretation. "the Inversion Test" is used to identify the ratio decidendi in any judgment. The central idea, in the words of Professor Wambaugh, is as under:*
>
> *"In order to make the test, let him first frame carefully the supposed proposition of law. Let him then insert in the proposition a word reversing its meaning. Let him then inquire whether, if the court had conceived this new proposition to be good, and had it in mind, the decision could have been the same. If the answer be affirmative, then, however excellent the original proposition may be, the case is not a precedent for that proposition, but if the answer be*

*negative the case is a precedent for the original proposition and possibly for other propositions also. [ Eugene Wambaugh, The Study of Cases (Boston: Little, Brown & Co., 1892) at p. 17.] "*

***114.*** *In order to test whether a particular proposition of law is to be treated as the ratio decidendi of the case, the proposition is to be inversed i.e. to remove from the text of the judgment as if it did not exist. If the conclusion of the case would still have been the same even without examining the proposition, then it cannot be regarded as the ratio decidendi of the case. This test has been followed to imply that the ratio decidendi is what is absolutely necessary for the decision of the case. "In order that an opinion may have the weight of a precedent", according to John Chipman Grey [ Another distinguished jurist who served as a Professor of Law at Harvard Law School.], "it must be an opinion, the formation of which, is necessary for the decision of a particular case".*

(emphasis supplied)

52. The test was affirmed by a three-Judge Bench of this Court in ***Nevada Properties (P) Ltd. v. State of Maharashtra*** reported in (2019) 20 SCC 119 wherein it was held thus:

***"13.*** *It follows from the aforesaid discussion that the decision in Tapas D. Neogy [State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685 : 1999 SCC (Cri) 1352] did not go into and decide the issue: whether immovable property would fall under the expression "any property" under Section 102 of the Code. We say so by applying the inversion test as referred to in State of Gujarat v. Utility Users' Welfare Assn. [State of Gujarat v. Utility Users' Welfare Assn., (2018) 6 SCC 21] , which states that the Court must first carefully frame the supposed proposition of law and then insert in the proposition a word reversing its meaning to get the answer whether or not a decision is a precedent for that proposition. If the answer is in the affirmative, the case is not a precedent for*

*that proposition. If the answer is in the negative, the case is a precedent for the original proposition and possibly for other propositions also. This is one of the tests applied to decide what can be regarded and treated as ratio decidendi of a decision. Reference in this regard can also be made to the decisions of this Court in U.P. SEB v. Pooran Chandra Pandey [U.P. SEB v. Pooran Chandra Pandey, (2007) 11 SCC 92 : (2008) 1 SCC (L&S) 736], CIT v. Sun Engg. Works (P) Ltd. [CIT v. Sun Engg. Works (P) Ltd., (1992) 4 SCC 363] and other cases which hold that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio. Not every observation found therein nor what logically flows from those observations is the ratio decidendi. Judgment in question has to be read as a whole and the observations have to be considered in light of the instances which were before the Court. This is the way to ascertain the true principles laid down by a decision. Ratio decidendi cannot be decided by picking out words or sentences averse to the context under question from the judgment."*

(emphasis supplied)

**a. Wambaugh's Test / Inversion Test**

53. The Inversion Test propounded by Wambaugh is based on the assumption that the *ratio decidendi* is a general rule without which a case must have been decided otherwise. Inversion Test is in the form of a dialogue between him and his student. He gave following instructions for this:

1. Frame carefully the supposed proposition of law.

2. Insert in the proposition a word reversing its meaning.

3. Inquire whether, if the court had conceived this new proposition to be good and had had it in mind, the decision could have been the same.

4. If the answer is affirmative, then, however, good the **Original Proposition** may be, the case is not a precedent for that proposition.

5. But if the answer be negative, the case is a precedent for the Original Proposition and possibly for other propositions also.

54. Thus, when a case turns only on one point the proposition or doctrine of the case, the reason for the decision, the *ratio decidendi*, must be a general rule without which the case must have been decided otherwise. A proposition of law which is not *ratio decidendi* under the above test must, according to Wambaugh, constitute a mere dictum.

55. However, Rupert Cross criticized the Inversion Test on the ground that *"the exhortation to frame carefully the supposed proposition of law and the restriction of the test to cases turning on only one point rob it of most of its value as a means of determining what was the ratio decidendi of a case, although it has its uses as a means of ascertaining what was not ratio"*.

56. Thus, the merit of Wambaugh's test is that it provides what may be an infallible means of ascertaining what is not *ratio decidendi*. It accords with the generally accepted view that a ruling can only be treated as *ratio* if it supports the ultimate order of the court.

**b. Halsbury's Test**

57. The concept of precedent has attained important role in administration of justice in the modern times. The case before the Court should be decided in

accordance with law and the doctrines. The mind of the Court should be clearly reflecting on the material in issue with regard to the facts of the case. The reason and spirit of case make law and not the letter of a particular precedent.

58. Lord Halsbury explained the word "*ratio decidendi"* as *"it may be laid down as a general rule that that part alone of a decision by a Court of Law is binding upon Courts of coordinate jurisdiction and inferior Courts which consists of the enunciation of the reason or principle upon which the question before the Court has really been determined. This underlying principle which forms the only authoritative element of a precedent is often termed the ratio decidendi"*.

59. In the famous case of ***Quinn v. Leathem***, Lord Halsbury said that:

> "*Now, before discussing the case of **Allen v. Flood** and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."*
>
> (emphasis supplied)

60. Thus, according to Lord Halsbury, it is by the choice of material facts that the Court create law.

**c. Goodhart's Test**

61. In 1929, Goodhart had argued that the *ratio* of a case must be found in the reasons for the decision and that there is no necessary connection between the ratio and the reasons. He laid down following guidelines for discovering the *ratio decidendi* of a case:

> 1. *Ratio decidendi* must not be sought in the reasons on which the judge has based his decision.
>
> 2. The reasons given by the judge in his opinion are of peculiar importance, for they may furnish us with a guide for determining which facts he considered material and which immaterial.
>
> 3. A decision for which no reasons are given does not necessarily lack a *ratio*; furthermore, the reasons offered by a court in reaching a decision might be considered inadequate or incorrect, yet the court's ruling might be endorsed in later cases – a 'bad reason may often make good law'.
>
> 4. Thus, *ratio decidendi* is whatever facts the judge has determined to be the material facts of the case, plus the judge's decision as based on those facts. It is by his choice of the material facts that the judge creates law.

62. If we accept Goodhart's conception of *ratio decidendi*, we could explain why hypothetical instances are unlikely to be accorded the same weight as judicial precedents as hypothetical instances are by definition *obiter dicta*. Also, this conception of *ratio decidendi* links the doctrine of precedent with the principle

that like cases be treated alike. Any court which considers itself bound by precedent would come to the same conclusion as was reached in a prior case unless there is in the case some further fact which it is prepared to treat as material, or unless fact considered material in the previous case is absent.

63. Applying the three tests referred to above, so as to understand the ratio of the decision of the Court rendered in ***Brij Mohan*** (supra) and its binding effect we have no hesitation in taking the view that the case on hand is not covered by the dictum as laid in ***Brij Mohan*** (supra). We find it difficult to accept the vociferous submission canvased on behalf of the respondents that so far as the rate at which the allotment is to be made is squarely covered by the dictum as laid in ***Brij Mohan*** (supra).

64. Ms. Bhati the learned ASG is right in her submission that so far as the first question answered by this Court in ***Brij Mohan*** (supra) is concerned i.e. whether HUDA should charge only the actual land cost plus development charges for the plots allotted to an oustee and not at the market price/normal allotment price; this Court returned a finding that the land acquisition Act, 1894 contemplates only benefits like solatium, additional amount and higher rate of interest to the oustees and not allotment of plots at cost price. HUDA or the State Government does not have any scheme providing for allotment of plots at actual cost of oustees. In such circumstances, it is not permissible for the Court to direct the State Government or the development authority to allot plots to the oustees at the reasonable price.

65. In so far as the second question answered by this Court in ***Brij Mohan*** (supra) is concerned i.e. what is the meaning of the expression "normal allotment rate", this Court found that as a matter of fact the land-loser had made an application in the year 1990 for allotment of plot. A direction was issued by this Court in the year 1992 but HUDA delayed the allotment to the appellants therein. In such circumstances, the rate for which the plots were initially offered was to be charged.

66. The second question answered in ***Brij Mohan*** (supra) is keeping in mind the facts of the case wherein the application was submitted by an oustee but still the plot was not allotted to him.

67. Ms. Bhati is right in her submission that the dictum as laid in ***Brij Mohan*** (supra) should not be read as laying down an absolute proposition of law that the "normal allotment rate" in all circumstances shall be paid when the sector is first floated for sale. As a matter of fact, the normal allotment rate would be the rate advertised by HUDA in pursuance of which the plots are allotted. In the case on hand the picture is hazy in so far as the fact whether appropriate applications in the prescribed format were preferred in accordance with the Policy of 1992 with deposit of the earnest money as stipulated in the scheme itself.

68. However, with all that has been said by us as aforesaid we are still inclined to direct the appellant to allot the plots to the eligible oustees in accordance with the Policy of 2016. It shall be open for the eligible oustees i.e., the respondent

herein to apply online in accordance with the Policy of 2016 with the requisite deposit of the amount. If such application is filed online with the deposit of the requisite amount, the appellant shall consider the same and process the online application accordingly.

**ii. <u>Maintainability of the Suit filed under Section 39 of the Specific Relief Act, 1963 for seeking Mandatory Injunction for Enforcement of the Obligations in terms of the Scheme of 1992</u>.**

69. Although it is not necessary for us to look into Section 39 of the Specific Relief Act, 1963 (for short, the Act, 1963) or consider whether the suits instituted by the respondents herein invoking Section 39 of the Act were maintainable in law, yet for the benefit of the courts below we would like to explain the scope and purport of Section 39 of the Act, 1963. We say so because irrespective of the question whether suits were maintainable in law or not we have decided to give the respondents herein the benefit of the 2016 Scheme.

70. Section 39 of the Act 1963 reads thus:

> *"39. Mandatory injunctions.—When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts."*

71. The term "obligation" in Section 39 referred to above has been defined under Section 2(a) of the Act 1963. The same reads thus:-

*"obligation" includes every duty enforceable by law;"*

72. Obligation is a tie or bond which obliges one to do or suffer something. The term as defined in the Act 1963, means *any duty enforceable by law* and, therefore, excludes all imperfect obligations, such as moral, social and religious duties, as the performance of those duties cannot be enforced by law. As the present definition includes any duty enforceable by law, it includes:-

(a) Obligations arising out of law of torts as well as of contract.

(b) Obligations arising out of trust.

(c) Obligations arising out of a statute.

73. In the case on hand, the suits were instituted by the respondents herein for mandatory injunction seeking allotment of plots in accordance with the scheme of 1992 floated by the State of Haryana.

74. This Section requires that the defendant or the party concerned must be prevented from breach of an obligation under the contract. It further requires that certain special acts, which flow from such obligation, must be specifically proved. The acts must have reference to an enforceable obligation. The breach of obligation and performance and compulsion to perform certain acts in relation to such obligation must be specifically established before a mandatory injunction can be granted. The plaintiff in a suit instituted by him under Section 39 of the

Act 1963 is obliged to satisfy the court with appropriate pleadings and cogent evidence that the defendant is committing breach of a particular obligation which is binding on him and there are certain acts which are capable of being enforced by the court in view of the terms of the policy of allotment of plot so far as the case on hand is concerned.

75. Mandatory injunction by its nature embodied under Section 39 of the 1963 Act is discretionary. The granting of mandatory injunction is a matter of judicial discretion of the court and it can be granted only in a case which falls strictly within the four corners of the provision - Section 39 of the Act 1963. The two elements which govern Section 39 of the Act 1963 for the grant of mandatory injunction are (i) the necessity to prevent breach of an obligation by the intervention of the court and (ii) that such acts should be of that nature capable of enforcement by the court. Yet another ingredient is also available which is crucial in the matter of grant of mandatory injunction that it should be 'amenable for exercise of judicial discretion'. A relief which is not amenable for exercising judicial discretion of the Court cannot be granted by way of a mandatory injunction. It should satisfy not only breach of an obligation and the necessity of its prevention, but also the availability of judicial discretion to be exercised. A mere breach of an obligation or necessity to prevent the same alone cannot be brought under the purview of mandatory injunction unless the same is amenable for exercising discretion by the Court.

**a. Conditions for granting a Mandatory Injunction.**

76. The Conditions for granting a mandatory injunction as developed over time by a catena of decisions of this Court may be summarized as under:

> **i) Obligation:** There must be a clear obligation on the part of the defendant.
> **ii) Breach:** A breach of that obligation must have occurred or be reasonably apprehended
> **iii) Necessity:** It must be necessary to compel the performance of specific acts to prevent or rectify the breach.
> **iv) Enforceability:** The court must be able to enforce the performance of those acts.
> **v) Balance of Convenience:** The balance of convenience must be in favour of the party seeking the injunction.
> **vi) Irreparable Injury:** The injury or damage caused by the breach must be irreparable or not adequately compensable in monetary terms.

77. Specific relief may, in brief be explained as relief in specie. It is the remedy which aims at the exact fulfilment of the obligation. The term 'obligation' as used in the Specific Relief Act in its wider juristic sense covers duties arising either ex-construction or ex-delicto. Every duty enforceable at law is obligation. The definition clause of the Act of 1963 does not allow narrow interpretation of the word 'obligation' to restrict it to a contractual duty alone. The definition of the word 'obligation' as used in the Act of 1963 is wide enough and the definition

cannot be equated with the definition of the word 'obligation' used in the English Law. 'Obligation' may be said to be a bond or tie, which constrains a person to do or suffer something, it implies a right in another person to which it is co-related, and it restricts the freedom of the obligee with reference to definite acts and forbearance; but in order that it may be enforced by a Court, it must be a legal obligation. The definition of 'obligation' in Section 2 of the Specific Relief Act is so wide that any breach of legal obligation may give a cause to the affected party. The definition of the word 'obligation' in Section 2 of the Act of 1963 should be interpreted in a way which may serve the cause of the society.

78. Before we talk about the legal rights of the oustees and the legal obligations on the part of the authorities, so far as the enforcement of the scheme for allotment of plots is concerned, we must look into some law on this subject:

i. The question of allotment of the plots to the oustees, came up for consideration before this Court in ***State of U.P. Vs. Smt. Pista Devi & Ors***. reported in AIR 1986 SC 2025, wherein the Court was called upon to consider the acquisition of land by Meerut Development Authority. The Court directed that where large tracts of land for the purposes of land development in urban areas is acquired, the developing authority should provide a house or shop site of reasonable size on reasonable terms to each of the expropriated persons, who have no houses or shops/buildings in the urban area in question. The said

direction was issued in view of the provisions of Section 21(2) of the Delhi Development Act, 1957, which contemplates settlement of those land-owners, whose land has been acquired.

ii. In State of ***Madhya Pradesh v. Narmada Bachao Andolan & Anr.*** reported in (2011) 7 SCC 639, this Court negated the argument that in case of land acquisition, the plea of deprivation of right to livelihood under Article 21 is sustainable. It was held to the following effect:

> *"26. It is desirable for the authority concerned to ensure that as far as practicable persons who had been living and carrying on business or other activity on the land acquired, if they so desire, and are willing to purchase and comply with any requirement of the authority or the local body, be given a piece of land on the terms settled with due regard to the price at which the land has been acquired from them. However, the State Government cannot be compelled to provide alternate accommodation to the oustees and it is for the authority concerned to consider the desirability and feasibility of providing alternative land considering the facts and circumstances of each case.*
>
> *27. In certain cases, the oustees are entitled to rehabilitation. Rehabilitation is meant only for those persons who have been rendered destitute because of a loss of residence or livelihood as a consequence of land acquisition. The authorities must explore the avenues of rehabilitation by way of employment, housing, investment opportunities, and identification of alternative lands.*
>
> > *"10.... A blinkered Vision of development, complete apathy towards those who are highly adversely affected by the development process and a cynical unconcern for the enforcement of the laws. lead to a situation where the rights and benefits promised and guaranteed under the Constitution hardly ever reach the most marginalised*

*citizens." (Mahanadi Coalfields Ltd. Vs. Mathias Oram (2010) 11SCC 269)*

*For people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic. (Vide State. of UP. v. Pista Devi AIR 1986 SC 2025, Narpat Singh v. Jaipur Development Authority AIR 2002 SC 2036, Land Acquisition Officer v. Mahaboob (2009) 14 SCC 54, Mahanadi Coalfields Ltd. v. Mathias Dram (2010) 11see 269 and. Brij Mohan v. HUDA (2011)2 see 29.) The fundamental right of the farmer to cultivation is a part of right to livelihood. "Agricultural land is the foundation for a sense of security and freedom from fear. Assured possession is a lasting source for peace and prosperity." India being a predominantly agricultural society, there is a "strong linkage between the land and the person's status in [the] social system".*

*28. However, in case of land acquisition, "the plea of deprivation of right to livelihood under Article 21 is unsustainable". (Vide Chameli Singh v. State of U'P. (1996) 2 sec 549 and Samatha v. Slate of A.P. (1997) 8 SCC191). This Court has consistently held that Article 300-A is not only a constitutional right but also a human right. (Vide Lachhman Dassv, Jagat Ram (2007) 10 see 448 and Amarjit Singh v. State of Punjab (2010) 10 see 43). However, in Jilubhai Nanbhai Khachar v. State of Gujarat 1995 Supp. (1) scc 596, this Court held: (SCC pp. 620 & 632, paras 30 & 58)*

*"30. Thus it is clear that right to property under Article 300- A is not a basic feature or structure of the Constitution. It is only a constitutional right. ....*

*58. ...The principle of unfairness of the procedure attracting Article 21 does not apply to the acquisition or deprivation of property* under Article 300-A giving effect to the directive principles."

(Emphasis supplied)

iii. This Court in ***Narmada Bachao Andolan Vs. Union of India*** reported in (2000) 10 SCC 664 held as under: (SCC pp. 702-03, para 62)

> *"62. The displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights. The effect is to see that on their rehabilitation at new locations they are better off than what they were. At the rehabilitation sites they will have more and better amenities than those they enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of the society will lead to betterment and progress."*
>
> (Emphasis supplied)

iv. In ***State of Kerala v. Peoples Union for Civil Liberties*** reported in (2009) 8 SCC 46, this Court held as under: (SCC p. 95, paras 102-03)

> *"102. Article 21 deals with right to life and liberty. Would it bring within its umbrage a right of tribals to be rehabilitated in their own habitat is the question?*
>
> *103. If the answer is to be rendered in the affirmative, then, for no reason whatsoever even an inch of land belonging to a member of Scheduled Tribe can ever be acquired. Furthermore,' a distinction must be borne between a right of rehabilitation, required to be provided when the land of the members of the Scheduled Tribes are acquired vis-a-vis a prohibition imposed upon the State from doing so at all."*
>
> (emphasis supplied)

79. In the ***Narmada Bachao Andolan (supra),*** under the head 'land for land', this Court observed that Constitution requires removal of economic inequalities and provides for provision of facilities and opportunities for a decent standard of

living and protection of economic interests of the weaker segments of the society. Every human has a right to improve his standard of living. The Court concluded that allotment of land in lieu of land acquired in view of the Rehabilitation & Resettlement Policy (for short 'R&R 'Policy'), the State Authorities are under obligation to allot land to the allottees as far as possible. The expression 'as far as possible' has been explained in para 38, which reads as under:

> *"38. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretiori/decision unless it is found to be palpably arbitrary. (Vide Iridium India Telecom Ltd. v. Motorola Inc. (2005) 2 see 145 and High Court of Judicature for Rajasthan v. Veena Verma (2009) 14 SCC 734). Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case."*

80. The Court further held that the Government has the power and competence to change the policy on the basis of ground realities and that State Government is competent to frame policy and a public policy can be challenged, where it offends some constitutional or statutory provisions. It observed as under:

> *"35. In State of Punjab v. Ram Lubhaya Bagga (1998) 4 SCC 117, this Court while examining the State policy fixing the rates for reimbursement of medical expenses to government servants held: (SCC pp. 129-30, paras 25-26 & 29)*

*"25. ...When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. [t is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court "would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.*

*26.... For every return there has to be investment. Investment needs resources and finances. So even to protect this sacrosanct right, finances are an inherent requirement. Harnessing such resources needs top priority.*

*29. No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its projects to the extent it is feasible."*

*36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Şingh Vijay Pal Singh v. State of U.P. (2007) 6 SCC 44, Villianur 1yarkkai Padukappu Maiyam v. Union of India (2009) 7 sec 561 and State of Kerala v. Peoples Union for Civil Liberties (2009) 8 see 46.)*

*37. Thus, it emerges to be a settled legal proposition that the Government has the power and competence to change the policy on the basis of ground realities. A public policy cannot be challenged through PIL where the State Government is competent to frame the policy and there is no need for anyone to raise any grievance even if the policy is changed. The public policy can only be challenged where it offends some constitutional or statutory provisions."*

(emphasis supplied)

81. This Court in ***Narmada Bachao Andolan (supra)*** has held that it is impermissible in law to read a part of the document in isolation. The document is to be read as a whole. (see para 44). In ***Jage Ram & others v. Union of India & others*** reported in 1995 Supp (4) SCC 615, this Court considered the earlier judgment in ***Pista Devi's*** case and held that since the acquisition is only for defence purposes, the allotment of alternative 'site would create innumerable complications and that allotment of alternative sites 'depends upon the purpose of acquisition as well. It was held to the following effect:

> *"1. The only question raised in these two writ petitions is whether an observation is to be made by this Court to the effect that the petitioners would be entitled to allotment of alternative sites by the Delhi Development Authority; It is true that the lands of the petitioners were acquired for a defence purpose, viz., establishment of Radar. They were duly paid the compensation demanded of. One of the reliefs sought in the writ petitions is that since they have been displaced from their holdings, they need some site for construction of their houses and that, therefore the Government of India may make an effort to provide them alternative Sites. We are aware of the decision rendered by this Court in State of UP, vs. Pista Devi AIR 1986 SC 2025 (See at p. 260). But it depends upon the acquisition for which it was made. In that case, acquisition related to planned development of housing scheme by Meerut Development Authority. Therefore, though no scheme was made providing alternative sites to those displaced persons whose lands were acquired and who themselves needed housing accommodations, a direction was given to the Meerut Development Authority to provide alternative sites for their housing purpose. Since the acquisition is only for defence purpose and if the request is acceded to, it would create innumerable complications, we*

*are constrained not to accede to forceful persuasive argument addressed by Mr. RP. Gupta, learned counsel for the petitioners."*

82. In ***S. Gurdial Singh & others v. Ludhiana Improvement Trust*** reported in (1995) 5 SCC 138, considering ***Pista Devi's*** case, this Court observed that the benefit of providing alternative sites should not be uniformly and mechanically extended to all the cases unless there is any express scheme framed by appropriate authorities and the scheme is in operation. This Court was considering the allotment of alternative sites for commercial purposes, as a local displaced persons in terms of acquisition of land by the Improvement Trust. It was observed as under:

*"4. It is then contended, relying upon-the decision of this* Court in *State of U.P. v. Pista Devi AIR 1986 SC 2025 that the appellants are entitled to allotment of alternative sites for commercial purpose. Therein, the land was acquired for housing development and the persons whose properties were sought to be displaced were directed to be provided housing accommodation under the schemes formed thereunder. The general ratio therein cannot be uniformly and mechanically extended to all the cases unless there is any express scheme framed by appropriate authorities and the scheme is in operation. Under these circumstances, we cannot give any express direction in this behalf. However, when the grievance was made by the appellants, an admission was made in the counter-affidavit filed in the High Court thus:"The petitioners could get a plot of land as local displaced persons in lieu of their acquired land according to rules on the subject."*

(Emphasis supplied)

83. In ***Amarjit Singh & ors. v. State of Punjab & ors.*** reported in (2010) 10 SCC 43, it has been held that rehabilitation is not a recognized right either under the Constitution or under the provisions of the Land Acquisition Act. Any beneficial measures taken by the Government are, therefore, guided only by humanitarian considerations of fairness and equity towards the landowners. The rehabilitation of the property owners is a part of the right to life guaranteed under Article 21 of the Constitution and that acquisition made in exercise of power of eminent domain for public purpose and that individual right of ownership over land must yield place to the larger public good. It was held as under:

> *"16. As regards the question of rehabilitation of the expropriated landowners, Mr. Subramanium, submitted that rehabilitation was not a recognised right either under the Constitution or under the provisions of the Land Acquisition Act. Any, beneficial measures taken by the Government are, therefore, guided only by humanitarian considerations of fairness and equity towards the landowners. The benefit of such measures is however subject to the satisfaction of all such conditions as may be stipulated by the Government in regard thereto. The policy relied upon by the appellants being only prospective cannot be made retrospective by a judicial order to cover acquisitions that have since long been finalised.*
>
> *xxx xxx xxx*
>
> *49. We must, in fairness to Mr. Gupta mention that he did not suggest that rehabilitation of the oustees was an essential part of any process of compulsory acquisition so as to render illegal any acquisition that is not accompanied by such measure. He did not pitch his case that high and in our*

*opinion rightly so. The decisions of this Court in New Reviera. Coop. Housing Society v. Land Acquisition Officer (1996) 1 SCC 731 and Chameli Singh v. State of U.P. (1996) 2 SCC 549 have repelled the contention that rehabilitation of the property owners is a part of the right to life guaranteed under Article 21 of the Constitution so as to render any "compulsory acquisition for public purpose bad for want of any such measures.*

*50. In New Reviera case (supra). this Court held that if the State comes forward with a proposal to provide alternative sites to the owners, the Court can give effect to any such proposal by issuing appropriate directions in that behalf. But a provision for alternative sites cannot be made a condition precedent for every acquisition of land. In Chameli Singh case (supra) also the Court held that acquisitions are made in exercise of power of eminent domain for public purpose, and that individual right of ownership over land must yield place to the larger public good. That acquisition in accordance with the procedure sanctioned by law is a valid exercise of power vested in the State hence cannot be taken to deprive the right to livelihood especially when compensation is paid for the acquired land at the rates prevailing on the date of publication of the preliminary notification.*

*51. There is, thus, no gainsaying that rehabilitation is not an essential requirement of law for any compulsory acquisition nor can acquisition made for a public purpose and in accordance with the procedure established by law upon payment of compensation that is fair and reasonable be assailed on the ground that any such acquisition violates the right to livelihood of the owners who may be dependent on the land being acquired from them."*

(emphasis supplied)

84. Thus, from the above-referred judgments, it is evident that acquisition of land does not violate any constitutional/ fundamental right of the displaced persons. However, they are entitled to resettlement and rehabilitation as per the policy framed for the oustees of the project concerned.

85. We looked into one of the judgments of the trial court rendered in Civil Suit No. 538 of 2007 titled *"Smt. Nirmala Devi, W/o Sh. Shishpal Varma, resident of Kaithal vs. The Estate Officer, Haryana Urban Development Authority, Kaithal & Ors."*. We take notice of the fact that the said suit came to be dismissed by the trial court essentially on two grounds. First on the ground that the plaintiff had failed to apply with the authorities concerned in a specified format with deposit of the earnest money at the rate of 10% of the total price as mentioned in the details provided in the brochure, and secondly on the ground that the suit was hopelessly time-barred as the same came to be instituted after a period of 14 years from the date of the advertisement/notice. The relevant findings recorded by the trial court read thus:-

> *"12. However, as per the brochure issued by the defendants in the year 1992, placed on record as Ex.P6, the prospective applicants, including the outees, were required to apply in a specified format with deposit of earnest money at the rate of 10% of the total cost as mentioned in the details provided in the said brochure. However, the plaintiff never applied for the said plot under the oustees quota in the year 1992 in response to the said advertisement/brochure before the last date of application. As per the averments of the plaintiff herself, as contained in the plaint, the plaintiff had applied*

*for the said plot only on 19.12.2006, i.e. after about 14 years of the said advertisement/notice. Although the plaintiff has submitted in her plaint that she had applied for the release of a free-hold residential developed plot in January 2000, no documentary evidence in the form of a copy of application or postal receipt etc., has been placed on record. In the case titled as Smt. Bhagwanti vs. HUDA 2002 (4) RCR (Civil) 21 (P&H) a division Bench of the Hon'ble High Punjab and Haryana High Court has held that where the petitioners submitted their application for allotment of plots after the prescribed date, the authority is not expected to wait for more than four years to apply at his/her convenience and then proceed to make allotment to others. In the present case too, a fair opportunity was granted to all concerned to apply. However, the plaintiff failed to avail of that opportunity. That being the case, the plaintiff has to thank herself for failure to get any plot.*

*13. Besides, as per a mandatory condition, as mentioned in the brochure, the applicants were supposed to deposit earnest money at the rate of 10% of the total cost of the plot. Rule 5 of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978, requires that the intending purchaser shall make an application to the Estate Officer concerned in the prescribed form (annexed to the regulation) and no application shall be valid unless it is accompanied by such amount as may be determined by the authorities which shall not be less than 10% of the price/premium. In the present case, the plaintiff has neither pleaded the payment of the earnest money nor placed on record any evidence regarding the payment of earnest money at the rate of 10%.*

*x x x x*

*17. It is an admitted fact that the land of the plaintiff had been acquired by the defendants in the year 1992 and the plaintiff had applied for the release of a free-hold residential developed plot under the oustees quota on 19.12.2006 and the present suit was filed on 1.8.2007. In other words, the plaintiff had applied for the plot after 14 years of the acquisition of her land and has filed the present suit after 15 years of the said acquisition. As per article 113 of the Limitation Act, 1993, the period of limitation for an injunction suit is three years from the date when the right to*

*sue accrues to the plaintiff. I find merit in the contention of Ld. Counsel for the defendants that the cause of action had arisen in favour of the plaintiff in the year 1992 itself when her land had been acquired by the defendants. It is pertinent to mention here that throughout her plaint, the plaintiff has not specified the date as to when the cause of action accrued in her favour. Therefore, the suit of the plaintiff having been filed after 15 years of the cause of action having arisen in her favour, the same is not only hopelessly time-barred but the plaintiff is also guilt of delay, laches and acquiescence on her part and is therefore not entitled to the equitable and discretionary relief of injunction. Therefore, issue No. 4 is also decided in favour of the defendants and against the plaintiff."*

(emphasis supplied)

86. The plaintiff Smt. Nirmala Devi preferred civil appeal in the court of the Additional District Judge bearing Civil Appeal No. 47 of 2012. The First Appeal came to be allowed. The matter of concern is that there is no discussion worth the name by the first appellate court as regards the findings recorded by the trial court referred to above. The reason for us to say that it is a matter of concern is because right from the inception the appellant herein has been saying that none of the oustees, at least the respondents before us, had applied in the requisite format for allotment of plots with the deposit of the earnest money. If this part of the obligation would have been performed or discharged by the oustees in accordance with the scheme then perhaps HUDA could have been called upon to perform its part of the obligation. It is only if the plaintiff would have performed its part of the obligation according to the scheme, then Section 39 of the Specific Relief Act, 1963 could have been invoked to compel the HUDA as defendant to perform its

part of the obligation. This aspect unfortunately has not been looked into even by the High Court.

87. We also looked into one of the judgments of the trial court allowing the suit filed by one Dixit Lal s/o Sh. Sunder Lal resident of Kaithal. We are referring to the judgment rendered by the trial court in Civil Suit No. 228/1 of 2009 decided on 21.11.2009.

88. In the said suit the entire line of reasoning is different. The trial court while decreeing the suit in favour of the plaintiff held as under:

> *"10. Plaintiff has claimed that no plot was allotted to him despite various requests made by him. Smt. Bimlesh mother of the plaintiff examined as PW-1 has deposed that plaintiff had applied for allotment of plot under the oustees quota, but the copy of the application was not readily available with him. She has further deposed that in the year 2007 as well she had approached the defendants at the time of allotment of plots in Sector-19 and 20 HUDA, Kaithal but her request was not considered by the defendants; whereas similarly placed persons had been allotted plots under the court orders. Shri Lakhi Ram, Clerk from the office of Haryana Urban development Authority. Kaithal examined as DW-1. Has deposed that plaintiff had not applied for allotment of plot nor had she deposited 10% of the earnest amount despite advertisement Ex. D3.*
>
> *11. Admittedly, there is no proof on record to show that the plaintiff had applied for a plot under the oustees quota. A perusal of Ex. D3 shows that the booking of the plots was open for general category as well as the oustees from 02.09.1992 till 01.10.1992. No doubt the earnest money has been specified against each category of land, but the said advertisement cannot be said to be in consonance with the policy of 1992 of Haryana Urban Development Authority which is applicable.*

*According to the said policy, Haryana Urban Development Authority was required to offer to the oustees in proportion to their acquired land. Only after making an offer, the Haryana Urban Development Authority could take the plea that the offer has not been accepted by the oustees by not applying for the plot within the given time. The oustees who make the application pursuant to such advertisement can be asked by Haryana Urban Development Authority to deposit 10% of the earnest money. Any revision or modification in the policy of 1992 cannot bar the claim of the persons whose land had been acquired two prior to the said modification. In the present suit the land of the plaintiff was acquired in the year 1989 and award was passed on 26.02.1992 and the modification in the policy made by Haryana Urban Development Authority in the year 1993 cannot have a retrospective effect.*

*12. In Civil Writ Petition No. 19927 of 2009 titled as Sandeep Vs. State of Haryana and others decided on 16.05.2011 by Hon'ble Mr. Justice Raniit Singh, Judge Hon'ble Punjab and Haryana High Court, Chandigarh, it has been observed as under:-*

> *"Majority of the claim are being denied on the ground that application is not sent with 10% of the price of the plot. This is also not in conformity with the policy so formulated. The HUDA concededly has not kept in register to keep the claims of the allottees live. The requirement of depositing 10% of the price would arise only if the claims are first invited as per the policies and it has to be through press a newspaper, the price, as per the policy instructions dated 12.03.1993, is to be deposited once the claim is finally accepted by the competent authority and when the sector scheme is floated. It is on account of these violations that majority of the oustees are being made approach this court through various writ petitions. In order to set the position right and as one time measure it is appropriate to direct HUDA to invite claims of all the oustees through an advertisement in the newspaper giving them sufficient time to make applications. Those who make applications pursuant to such an advertisement may be asked to deposit 10% of the price, if the plots are still available. Their claims be considered in the light of the policies formulated by HUDA."*

> *13. The Haryana Urban Development Authority has not performed its obligation in inviting the claim of oustees as laid down in the policy dated 19.03.1992 and subsequent policy. The said policy required. Haryana Urban Development Authority to invite the claim of the oustees separately before floating any Sector. The land looser have option to buy first before applications are invited from general public. In the present case as well as the claim of the oustees were invited while inviting the claim of the general public. It cannot be denied that once the claim of the oustees is invited along with general public, the possibility of first satisfying the claim of the oustees would stand defeated. Merely because the plaintiff has not produced any proof with regard to his application for allotment of plot would not defeat her right as it was the duty of the Haryana Urban Development Authority to first make a clear offer with regard to allotment. The land of the plaintiff was admittedly acquired by the defendants and no plot has been allotted to the plaintiff till date in lieu of the said acquisition. The plaintiff has a right to receive the preferential plot under the oustees quota and in order to redress his grievance plaintiff has filed the present suit. The plaintiff has a locus standi to file the present suit and the suit is maintainable."*

89. Thus, while allowing the suit the trial court in no uncertain terms observed that there was no proof or any evidence worth the name on record to indicate that the plaintiff had applied for a plot under the oustee quota yet it proceeded to say that the advertisement issued by HUDA was not in any conformity with the policy of 1992 and in such circumstances the oustees were not obliged to prefer any application in the prescribed format with deposit of 10 per cent of the price.

90. Although we are not convinced with the line of reasoning adopted by the trial court while allowing the suit as referred to above, as affirmed upto the High

Court yet even assuming for the moment that the advertisement was not in conformity with the Scheme of 1992 there is no explanation worth the name at the end any of the oustees why the suits were instituted after a lapse of almost 14 to 20 years, more particularly, when the land of respective oustees came to be acquired in 1992.

91. Well, it may be argued and quite legitimately that the term "obligation" in Section 39 of the Act, 1963 may not be always mutual. Section 39 deals with mandatory injunctions, which can be used to prevent the breach of an obligation and at times compel the performance of specific acts necessary to prevent that breach. The obligation, in this context, refers to a duty enforceable by law, and while it can be reciprocal in some cases (like a contract), it can also be a unilateral duty such as a trustee's obligation to a beneficiary. However, it would all depend on the individual facts of each case. When the scheme in question specifically provides that an oustee shall file an application in a specified format with deposit of the requisite amount towards earnest money then it is a part of the obligation on the part of the oustee to do so before he calls upon the State to allot the plot in accordance with the terms of the scheme.

92. There is no explanation worth the name why it took 14-20 years for the plaintiffs to institute their respective suits for mandatory injunction under Section 39 of the Act 1963. Whether Article 58 of the Limitation Act would apply or

Article 113 of the Limitation Act, the period of limitation would be 3 years. By no stretch of imagination, it can be said that the case on hand is one of recurring cause of action so as to bring the suit within the period of limitation though instituted almost after a period of 14-20 years.

93. In such circumstances referred to above, we could have taken the view that the suits themselves were not maintainable as they should have been dismissed only on the ground of limitation far from being not maintainable under Section 39 of the Act 1963.

94. However, as observed earlier, since we are inclined to grant the benefit of the scheme of 2016, we are not non-suiting the respondents (original plaintiffs) completely.

## D. CONCLUSION

95. We summarise our final conclusion and dispose of all the appeals with the following directions:

**(i)** The respondents are not entitled to claim as a matter of legal right relying on the decision of ***Brij Mohan (supra)*** that they should be allotted plots as oustees only at the price as determined in the 1992 policy.

**(ii)** The respondents are entitled at the most to seek the benefit of the 2016 policy for the purpose of allotment of plots as oustees.

**(iii)** We grant four weeks time to all the respondents herein to prefer an appropriate online application with deposit of the requisite amount in accordance with the policy of 2016. If within a period of four weeks any of the respondents herein prefer any online application in accordance with the scheme of 2016 then in such circumstances the authority concerned shall look into the applications and process the same in accordance with the scheme of 2016. We clarify that it will be up to the authority to look into whether the respondents are otherwise eligible for the allotment of plots or not.

**(iv)** We make it clear that there shall not be any further extension of time for the purpose of applying online with deposit of the requisite amount.

**(v)** We understand that some of the respondents may be very rustic and illiterate and may not be in a position to apply online, in such circumstances we permit them to apply by preferring an appropriate application or otherwise addressed to the competent authority with deposit of the requisite amount.

**(vi)** We make it clear that the entire exercise shall be completed within a period of eight weeks from the date of the receipt of the online application that may be filed by the respondents.

**(vii)** The State of Haryana as well as HUDA shall ensure that land grabbers or any other miscreants may not form a cartel and try to take undue advantage of the allotment of plots. At the end it should not happen that unscrupulous elements ultimately derive any benefit or advantage from allotment of land to the oustees. In this regard the State and HUDA will have to remain very vigilant.

**(viii)** We believe that since the allotment of plot is with a laudable object and not for any monetary gain, a condition should be imposed at the time of allotment that the allotee shall not be entitled to transfer the plot to any third party without the permission of the competent authority and in any case not within five years from the date of the allotment.

**(ix)** This litigation is an eye opener for all States in this country. If land is required for any public purpose law permits the Government or any instrumentality of Government to acquire in accordance with the provisions of the Land Acquisition Act or any other State Act enacted for the purpose of acquisition. When land is acquired for any public purpose the person whose land is taken away is entitled to appropriate compensation in accordance with the settled principles of law. It is only in the rarest of the rare case that the Government may consider floating any scheme for rehabilitation of the displaced persons over and above paying them compensation in terms of money. At times the State Government with a view to appease its subjects float unnecessary schemes and ultimately land up in difficulties. It would unnecessarily give rise to number of litigations. The classic example is the one at hand. What we would like to convey is that it is not necessary that in all cases over and above compensation in terms of money, rehabilitation of the property owners is a must. Any beneficial measures taken by the Government should be guided only by humanitarian considerations of fairness and equity towards the landowners.

**(x)** Ordinarily, rehabilitation should only be meant for those persons who have been rendered destitute because of loss of residence or livelihood as a consequence of land acquisition. In other words, for people whose lives and livelihood are intrinsically connected to the land.

**(xi)** We have made ourselves very explicitly clear that in cases of land acquisition the plea of deprivation of right to livelihood under Article 21 of the Constitution is unsustainable.

96. All the appeals are disposed of in the aforesaid terms.

97. The Registry is directed to circulate one copy each of this judgment to all the High Courts.

**..... J.**
**(J.B. Pardiwala)**

**..... J.**
**(R. Mahadevan)**

**New Delhi;**
**14th July, 2025.**