Rajesh Goyal & others. Vs State of Uttarakhand & others.

14 of 2015

Court: Uttarakhand High Court

Date of Decision: May 12, 2017

Acts Referred:
Constitution of India, Article 226 - Power of High Courts to Issue certain writs#Code of Civil Procedure, 1908, Section 11 - Res Judicata#Land Acquisition Act, 1894, Section 6, Section 17(4), Section 5A, Section 17 - Declaration that land is required for a public purpose - Special powers In cases of urgency - Hearing of objections - Special powers In cases of urgency#Central Excise Act, 1944, Section 35E(3) - Powers of Board or Commissioner of Central Excise] to pass certain orders.#Electricity Act, 2003, Section 125, Section 111(2) - Appeal to Supreme Court - Appeal to Appellate Tribunal

Hon'ble Judges: K.M. Joseph, V.K. Bist

Bench: Division Bench

Advocate: Vishal Gupta, H.M. Bhatia, Vinay Garg, Rahul Consul, Pradeep Joshi

Judgement

1. Appellants are the writ petitioners. They filed the writ petition seeking the following reliefs: ""i) Issue a writ, in the nature of certiorari quashing the

impugned order dated 07.08.2013 passed by the Respondent No. 3 (contained as Annexure no. 12 to this writ petition). ii) Issue a writ, order or

direction in the nature of mandamus commanding the respondent no. 2 to freehold the entire Nazul Land of the petitioners (as mentioned in Para

no. 16 of this writ petition) in accordance with the directions contained in Government Order dated 02.12.2011 issued by respondent no. 1

(contained as Annexure no. 6 to this writ petition).

2. The learned Single Judge dismissed the writ petition. Hence, the appeal.

3. We have heard Mr. Vishal Gupta, Advocate, along with Mr. H.M. Bhatia, Advocate for the appellants; Mr. Vinay Garg, Advocate appearing

on behalf of the MDDA; and Mr. Pradeep Joshi, learned Standing Counsel appearing for the State.

4. Briefly put, the case of the appellants is as follows: (i) Appellant Nos. 1 to 4 are the successors in interest of one Sri Sagar Mal Goyal and the

other appellants, four in number, claim that they are nazul lease holders. Applications for making their nazul lands freehold had been made by them

along with deposit of 25 per cent of the charges. Nazul Policy was declared by the State of Uttarakhand, which also provided for honouring

freehold conversion applications filed earlier as per the Nazul Policy of the State of Uttar Pradesh. The Government was considering the issue of

widening the Chakrata Road and the applications of the appellants were kept pending. It is averred that, from the date of the applications till

November, 2011, all the appellants were in contact with the authorities and requested them verbally for conversion. Thereafter, it is alleged that a

consensus was arrived at between the shopkeepers / residents of Chakrata Road, including the appellants, and the Government and order dated

02.12.2011 was issued for widening of Chakrata Road and for rehabilitation. Reference is made, in particular, to Paragraphs 3(7) & 3(9) of the

said order, which read as follows: ""3(7) In case of Nazul holders who have deposited 25% amount on self-evaluation basis for conversion of their

Nazul Leased land into free-hold, allotment of shop/house to them at the new place be made after getting the balance amount deposited from them

on the basis of previous circle rate or the circle rate prevalent in the year 2000 and after conversion into free-hold. 3(9) In case of Nazul Lease

Holders whose term has expired, facility of Freehold conversion be provided as per the provisions contained in Government Order No. 761/V/H-

20121-01(N.L.)/2008-T.C., dated 29th November, 2011."" (ii) A part of the property of the appellants came to be demolished by the second

respondent. It is alleged that it is done without complying with the conditions mentioned in paragraphs 3(7) & 3(9), which we have adverted to,

and provisional allotment letters of shops / houses were handed over to the appellants just 24 hours prior to undertaking the demolition. Appellants

have some property left after the said demolition. Notices were issued demanding freehold conversion charges at the rate of Rs. 6,000/- per

square meter for only part of the land of the appellants taken during the widening, in lieu of which appellants were allotted shops / houses in the

new complex. Appellants gave representations (Annexure No. 9). It is their case that respondent No. 2 is bound to freehold the entire nazul land

of the appellants. (iii) One writ petition being Writ Petition (PIL) No. 87 of 2012 was filed before this Court. The petitioners therein sought a

direction to provide adequate parking facility and pathways in and around the area demolished for widening the Chakrata Road on the ground that

it would ensure that parking is not done on the side of the widened Chakrata Road and to ensure reconstruction. (iv) Reference is made to a letter

dated 02.07.2013 (Annexure No. 11) sent by the Vice Chairman, MDDA, to the District Magistrate, Dehradun to the effect that the nazul land

should not be made freehold and be vested with the Government as it is required for redevelopment. On 25.07.2013, the Vice Chairman assumed

charge as District Magistrate, Dehradun and, on 07.08.2013, he is alleged to have accepted his own proposal, which was sent in the capacity as

the Vice Chairman, and vested the nazul land (Annexure No. 12). On 11.10.2013, the Government issued Notification under Sections 4 & 17 of

the Land Acquisition Act for acquiring the properties of the appellants and other owners. Thereupon, Writ Petition (PIL) No. 87 of 2012 was

withdrawn expressing satisfaction and the same was disposed of by this Court vide Annexure No. 14. (v) There is reference to the appellants and

their society challenging the land acquisition proceedings and the Court striking down the urgency clause and ordering the appellants to file

objections under Section 5A. (vi) Paragraph 29 of the writ petition being very relevant, we extract the same as under: ""29. That the petitioners

came to know about the impugned order passed by the District Magistrate on 07- 08-2013 recently when Rajendra Singh again filed a Writ

Petition (P.I.L.) no. 177 of 2014 in this Hon''ble court which was listed on 13.11.2014 after annexing the proposal sent by Vice Chairman-

MDDA and the order passed by the District Magistrate - Dehradun, seeking directions from the Hon''ble court for ensuring that Land Acquisition

process of acquiring properties at Chakrata Road under the purported purpose of Redevelopment of Chakrata Road is completed timely."" (vii)

Thereafter, the present writ petition was filed. The following are the only grounds, which were taken in the writ petition: ""i. Because the impugned

order is arbitrary, illegal and without jurisdiction. ii. Because the respondent no. 3 has no right to pass the impugned order. iii. Because the

application of the petitioners for conversion from Nazul into freehold are still pending for disposal and there is an obligation on the respondent No.

2 to convert the Nazul land of the petitioners into freehold as per directions contained in the Government Order dated 02.12.2011 which is still in

force.

5. Mr. Vishal Gupta, learned counsel appearing for the appellants would submit that the impugned order is arbitrary. He would further submit that,

before the order was passed, no opportunity was provided to the appellants to put forward their version and, hence, principles of natural justice

stood violated. It is, further, contended that the Vice Chairman of the MDDA, for a short period, became the District Magistrate. The Vice

Chairman had put forth the proposal for vesting the land in terms of the re-development plan and, within a few days of his taking over charge as the

District Magistrate, the impugned order was passed on 07.08.2013 by the very same person in his capacity as the District Magistrate. He poses a

question, whether this does not represent a clear case of bias, as the very same person, who made the recommendation, takes a decision in his

dual capacity and the impugned order was passed. Next, it is submitted that the order passed was not communicated. To comply with the

principles of natural justice, it was the duty of the authority to communicate the orders and the same was not done. He would, further, submit that

the word ""public use"" is different from the word ""public purpose"". This submission is made in the context of Clause 10 of the 2009 Nazul Policy.

The same reads as follows: ""10. There shall not be any binding to convert into freehold, either in favour of the lessee or anybody else, any such

Nazul land which is required by the State government. For such land the decision shall be taken by the District Magistrate as per the provisions of

clause 7(e). If MDDA needs any land for public use the proposal for decision shall be sent by the Vice Chairman to the District Magistrate.

Further action shall be taken as per the decision of the District Magistrate.

6. It is, therefore, contended that the concept of public purpose is wider than public use. The words ""public use"" employed in Clause 10 bearing

only a restricted meaning, the purpose in question would not fall within its embrace. He would also submit that the Court may bear in mind the

circumstances, which led to the order dated 02.12.2011 being passed. Keeping in view the problem of congestion at Chakrata Road and the

urgent need to act in the matter and striking a balance between the right to protect the occupants like the appellants and the need to widen the road

on an urgent basis, the Government brought out the order, which should have been honoured. Apart from the Policy of 2009, the Court may bear

in mind the terms of the order dated 02.12.2011 under which, clearly, the appellants are entitled to have their lands made freehold. He poses a

question, when the Cabinet has taken a decision, which has resulted in the order dated 02.12.2011, whether the District Magistrate was

competent to negate the Cabinet decision. In his submission, he has no authority to do so.

7. Sri Vinay Garg, learned counsel appearing for the second respondent (MDDA) would submit that there were only two prayers in the writ

petition, namely, to enforce the order dated 02.12.2011 and to quash the decision dated 07.08.2013 passed by the District Magistrate. He points

out the grounds, which were taken, namely, that the District Magistrate did not have the authority and, further that the applications filed by the writ

petitioners were pending for granting freehold. The other ground, of course he points out, is too wide a ground and no clear ground is taken. In

regard to the contention that the District Magistrate did not have authority, he would submit that Clause 10 of the Nazul Policy of 2009 clearly

empowered the District Magistrate to pass the order, he has passed. As regards enforcing of the order dated 02.12.2011, he would submit that

the applications of the predecessorin-interest of appellant nos. 1 to 4 were rejected in the year 2007. The application of appellant no. 8 was also

rejected. He would also press the plea of res judicata, as also, constructive res judicata. This is for the reason, he would point out, that the earlier

writ petition was filed being Writ Petition No. 694 of 2014 (M/S) and in the same, there was a similar prayer. The said prayer must be treated as

having been declined, inasmuch as, it was not granted and it is not open for the appellant nos. 1 to 4 and two others, six in all, to claim the same

relief all over again. As regard, appellant no. 7, it is pointed out that the application itself was filed in May, 2012; whereas the period, within which,

it should have been filed expired on 31.03.2012. Even the extended period given with reference to Clause 9 of the order dated 02.12.2011

expired on 31.03.2012. He would further submit that insofar as there is no case made out for enforcing the order dated 02.12.2011, there would

be no basis for the appellants to mount a challenge to the order dated 07.08.2013. He would also submit the facts in the following sequence: It is

contended that there was increasing load and need for planned development of Dehradun and a decision was taken by the State Government for

redevelopment of certain areas. The area was given to MDDA for redevelopment. The State Government, in consensus with the residents /

occupants, issued a letter directing the MDDA to rehabilitate the proposed displaced persons after demolition by the PWD by providing

alternative accommodation to the affected areas and to grant concessions in the bye-laws including conversion to freehold subject to certain

conditions. In the aftermath of the demolition, the partly demolished structures became very unsafe and unstable. The Disaster Management

Department reported that there were cracks and their ultimate sudden collapse cannot be ruled out. It recommended that as a long term solution,

there should be complete demolition. PWD reported the condition of the buildings to be a threat to life of public. On 27.09.2012, Writ Petition

(PIL) No. 87 of 2012 was filed for directing the State Government to take remedial steps. On 27.05.2013, the High Court, in the said litigation,

asked the MDDA to submit the redevelopment plan, which was prepared by it, to the State Government. On 05.06.2013, the MDDA submitted

the said redevelopment of Chakrata Road, also keeping in view the suggestions of DMMC, which required acquisition of land and building in the

area. On 02.07.2013, the MDDA requested the District Magistrate to consider vesting of Nazul land in the Government for redevelopment in view

of the High Court"s order. The State Government approved the redevelopment plan of the MDDA and directed to submit a detailed proposal for

immediate implementation of the redevelopment plan on 08.07.2013. It is further pointed out that on 08.07.2013, the appellants came to be

impleaded in Writ Petition (PIL) No. 87 of 2012 and were permitted to file counter affidavit. The State Government"s approval to the

redevelopment plan of MDDA was recorded in the order. On 07.08.2013, the impugned order was passed by the District Magistrate. Still further

on 22.09.2013, the Chakrata Road Welfare Association, consisting of 34 members including the appellants, filed Writ Petition (MS) No. 2357 of

2013 also for a direction for freehold in terms of the Government Memo dated 02.12.2011. On 06.10.2013, the MDDA submitted an affidavit in

Writ Petition (PIL) No. 87 of 2012 clearly stating that the Nazul land was vested in the State and, also, enclosing the impugned order dated

07.08.2013 passed by the District Magistrate. On 08.10.2013, the High Court recorded the above position and directed the Government to give

a time schedule on affidavit. On 11.10.2013 and 17.10.2013, Notifications were issued under Sections 4 & 17 of the Land Acquisition Act, 1894

for acquisition of land and in the case of Nazul land, only the structure. On 22.10.2013, pursuant to the order dated 08.10.2013, the State

Government submitted a time schedule for completing the formalities for redevelopment by the MDDA, with an assurance to comply with the

same. On 14.11.2013, SLP (C) No. 33178 of 2013 was filed in the Hon''ble Supreme Court by the appellants challenging the order dated

08.10.2013, mentioned above. Along with the counter affidavit filed, copy of the affidavit dated 06.10.2013 was annexed specifically mentioning

about the impugned order in this case. The SLP came to be disposed of with a request to the High Court to dispose of the writ petition within eight

weeks. On 27.12.2013, the High Court disposed of the writ petition considering the report of the DMMC and the remedial steps taken by the

State Government in regard to the redevelopment of the area. In December 2013, a writ petition, namely, Writ Petition No. 694 of 2014 (M/S)

was filed by appellant nos. 1 to 6 and 38 others challenging the Notifications issued under Sections 4 & 17 of the Land Acquisition Act, 1894.

They also sought a direction to implement the order dated 02.12.2011. The order dated 27.12.2013 was also filed with the writ petition. Also

Writ Petition Nos. 2929 of 2014 (M/S) and 686 of 2014 (M/S) were filed on various grounds, including the ground relating to public purpose.

The writ petition filed earlier on 22.09.2013, namely, Writ Petition (MS) No. 2357 of 2013, was withdrawn with liberty to file a fresh writ petition

on behalf of individual lessee with better, complete and correct particulars seeking appropriate reliefs on 13.03.2014. On 10.04.2014, learned

counsel for the State Government and the MDDA in Writ Petition No. 694 of 2014 (M/S) accepted that in view of the decisions on invocation of

urgency provision, the State Government would conduct an inquiry under Section 5-A of the Land Acquisition Act and the petitioners therein,

including the appellants submitted that their writ petitions be disposed of in the light of the submissions made by the State. The learned Single Judge

disposed of the writ petitions after hearing both on Sections 6 & 17 and the applicability of new Acquisition Act, by quashing only the invocation of

Section 17(4), based on the concession by the State and submissions by the appellants and time was granted to file objection. The petitioners,

including the appellants herein filed review petitions on 06.05.2014 seeking also to have the Section 4 Notification quashed. It is pointed out that

on the same day, review petitions were allowed quashing Section 4 Notification without granting any opportunity to file counter affidavit. The

MDDA filed Special Appeals. On 17.07.2014, by a reasoned decision, the Division Bench set aside the review orders that had quashed the

Notification under Section 4 of the Act, and the Division Bench directed the proceedings to continue, as was directed in the order dated

10.04.2014. On 11.11.2014, Writ Petition No. 177 of 2014 Rajinder Singh vs. State and others was filed seeking direction to the State

Government to implement the assurance given by them in their affidavit dated 22.10.2013 in Writ Petition (PIL) No. 87 of 2012. Special Leave

Petition Nos. 31174-76/2014 were filed by the appellants challenging the order dated 17.07.2014 passed by the Division Bench, as mentioned

hereinbefore. It was contended that therein, the issue and the question of law were raised about the Government Order dated 02.12.2011 for

conversion of freehold. Special Leave Petitions were dismissed. Thus, the Notification under Section-4 of the Act was upheld. It is submitted that

on 20.12.2014, the writ petition, from which the present Special Appeal arises, came to be filed by five Nazul occupants claiming themselves to be

the "Nazul Lease Holders". It is pointed out that out of 82 Nazul properties, only five are before the Court. It is contended that challenge to the

order dated 07.08.2013 was made after 14 months and the direction to implement the Government order dated 02.12.2011 for freehold is made

after three years. It is pointed out that the appellants have not come with clean hands in the writ jurisdiction. They have made false averments. It is

pointed out that, in fact, in order to get over the laches in filing the writ petition challenging the order dated 07.08.2013, it is pleaded by the

appellants that they came to know of the order dated 07.08.2013 in November, 2014. They filed a supplementary affidavit on 06.01.2015 in the

writ petition that despite their intervention filed in Writ Petition No. 177 of 2014 being allowed, the copy of the petition was not served on them. It

is further contended that a false averment is made that the present writ petition was the first writ petition for the cause of action therein, inter alia,

seeking implementation of order dated 02.12.2011. Our attention is drawn to the prayers made in the earlier writ petition, namely, Writ Petition

No. 694 of 2014 (M/S) and another; it is pointed out to be another instance of false averment disentitling the appellants from any relief in Article

226 of the Constitution of India. It is further pointed out that it is falsely contended that the applications for getting the land free hold were still

pending. It is pointed out that as far as the applications of the predecessor in interest of the appellant nos. 1 to 4 are concerned, which were

submitted, they were rejected way back in 2007. Yet another false averment is made to the contrary that the application is still pending. So also, in

respect of appellant no. 8, it is contended that the application is pending, when it has been rejected. The conduct of the appellants in seeking

interim stay both in the writ petition and in the Special Appeal of the acquisition proceedings is pointed out as yet another instance of the conduct

of the appellants being such as should disentitle them to their discretionary relief under Article 226 of the Constitution of India. It is pointed out that

the appellants'' efforts to invalidate the Notification issued under Section 4 of the Act had become unsuccessful right up to the Hon''ble Apex Court

as already pointed out and still the appellants sought stay of the Notification. Material facts have been suppressed in filing of the Appeal. It is stated

that in order to justify the false affidavit, appellants filed another additional affidavit on 02.03.2015 sworn to by appellant (petitioner no. 5) and it is

contended that in order to justify the false averments, further false averments have been made.

8. It is the case of Sri Vinay Garg that Clauses 3(7) & 3(9) in the order dated 02.12.2011, which have been relied on by the appellants, had only

the following implications. In respect of the property, which was demolished or land taken and made use of for the purpose of widening the

Chakrata road, in Clause 7 read with Clause 3, it was intended that such persons would be dealt with in the following way: If they had applied for

getting freehold and had deposited 25 per cent, they would be accommodated by way of rehabilitation in the structure to be put up to the extent of

an equivalent area on the condition that they would pay up the balance amount to get the property made freehold.

9. This is on the basis that it was contemplated that they would get complete rights in the property, to which, they would be relocated consequent

upon rehabilitation and it is, therefore, expected that they would also pay up the balance amount to make their lands freehold so that they could be

treated accordingly. As far as Clause 9 of the order dated 02.12.2011 is concerned, it had only the following consequences: A time limit had been

fixed for applying for the freehold rights and that would expire. The Government had issued an order extending the time limit in such cases to

31.03.2012. All that Clause 9 vouchsafed was that those persons amongst the residents / occupants, who had not applied within the time limit,

therefore, they were unable to take the benefit of the extended period, they could also apply and avail the benefit.

10. It is pointed out that, in fact, what happened was that in the aftermath of the demolition, appellants, along with others, were relocated to the

newly constructed portions by way of provisional allotment and without insisting on the strict compliance of the terms of Clause 7. They were not in

a position to produce documents showing that they were Nazul lease holders. It is wrong to think that under Clause 9, even those Nazul lessees,

whose leases had expired, could apply within the extended time for getting the benefit of freehold rights. All that is intended was to extend the time

limit, within which the applications could be filed by the persons, who had valid lease. Appellants have not produced any document to substantiate

their case that they are Nazul lease holders. This is besides pointing out that the applications of the appellants have been rejected. It is also wrong

to contend that under the order dated 02.12.2011, it is contemplated that those, whose properties came to be demolished, could stake a claim to

have their other properties made freehold. All that was intended was to take the property affected by the demolition into consideration and to

provide for making of the freehold to the said extent only. It is submitted that there is no need to hear the appellants or to comply with natural

justice as such. In the factual background leading upto the order of the High Court in Writ Petition (PIL) No. 87 of 2012, the approval given by

the Government to redevelopment plan was pressed upon us and it was contended that there is no need for an opportunity of hearing as it would

be an exercise in futility. There was a clear need to vest the land in terms of Clause 10 as there was a need to make use of the said land for public

purpose. There was no vested rights with the appellants to claim the freehold rights. The land belonged to the Government. Under the

redevelopment plan, the said lands were needed clearly for public purpose. In absence of any legal right and in the context of the admitted facts,

clearly, there is no need to issue notice to the appellants. As far as the action of the Vice Chairman of the MDDA, who had earlier written to the

District Magistrate to vest the land, acting as a District Magistrate and, in his capacity as such, passing the impugned order being afflicted with the

vice of bias, it is the doctrine of necessity, which is pressed before us. The question is posed as to what other order could have been passed by the

District Magistrate. It is submitted that the power under Clause 10 of the Nazul Policy of 2009 is vested with the District Magistrate. When he was

acting as a District Magistrate, having regard to all facts including the direction issued by the High Court in Writ Petition (PIL) No. 87 of 2012, if

the District Magistrate took the decision to vest the land, when there was no other authority, which could have taken this decision under law,

clearly it is not vulnerable to attack on the ground of bias. Regarding the contention that the order passed by the District Magistrate was not served

on the appellants and they could not challenge the order, and this amounted to violation of principle of natural justice, Sri Vinay Garg would submit

that the appellants were clearly aware of the order dated 07.08.2013 by virtue of the facts, which have been narrated above and even in the

absence of a formal communication as such by the District Magistrate, having an actual or constructive knowledge would be sufficient for the

appellants to have challenged the order if they wished. He would also submit that this Court may notice that the writ petition is filed after nearly 14

years after filing of the applications by the appellants seeking freeholding of their lands. If the period is to run from the order dated 02.12.2011, the

writ petition is filed after more than three years. The learned counsel for the respondents drew our attention to Paragraph 10 of the writ petition,

which reads as follows: ""That it is important to mention here that from the date of application till November, 2011 all the appellants were in contact

to the authorities from time to time and requested the competent authority verbally for conversion into freehold.

11. It is submitted that the Court should not give credence to this version. He would also submit that the reliance placed on the case of Mohinder

Singh Gill & another vs. The Chief Election Commissioner, New Delhi & others, reported in (1978) 1 SCC 405 is without any basis as perusal of

the impugned order dated 07.08.2013 would show that it is not a case, where new grounds are being taken.

12. Per contra, learned counsel for the appellants would submit that as far as laches in filing the writ petition is concerned, this is a case, which

involves valuable property rights. Even though the Intervention Application was allowed in Writ Petition (PIL) No. 87 of 2012, the copy of the

counter affidavit filed by the MDDA was not served on them. Without serving the copy of the counter affidavit on the appellants, which counter

affidavit contained the impugned order, no notice could be imputed to the appellants about the said order. It may be true that when the order was

pronounced, there was reference to the same. The reference in the same, it seems, is insufficient to impute notice of the order to the appellants.

Equally the proceedings in the Hon''ble Supreme Court could not be sufficient to impute notice to the appellants and clearly there was a duty to

communicate the order by the concerned Authority as valuable property rights of the appellants were sought to be affected. The kind of

knowledge, attributed to the appellants of the order and its contents, was clearly inadequate. As far as the plea of res judicata is concerned, based

on Writ Petition No. 694 of 2014 (M/S) and another, it is, first of all, submitted that in Writ Petition No. 694 of 2014 (M/S), only six out of eight

appellants in this case were parties. He would submit that there cannot be res judicata as such for the reason that the said writ petitions came to be

disposed of by way of consent. There was no adjudication as it was not a case of it being finally heard and decided. ''Without such adjudication,

there cannot be res judicata'' and in this regard, the attention is drawn to the judgment of the Hon''ble Apex Court. The Appellate Court only

directed the compliance of the direction by the learned Single Judge to afford hearing under Clause 5-A of the Land Acquisition Act and,

therefore, there can be no bar in claiming the same relief in the present writ petition. It is furthermore submitted that in the earlier writ petition, the

challenge was essentially to the proceedings under the Land Acquisition Act and the relief relating to the order dated 02.12.2011 was really not the

substantive bone of contention. In the changed scenario, when the order dated 07.08.2013 came to be passed, there is a new cause of action and

the law does not prevent the claiming of the relief relating to the order dated 02.12.2011. He relied on the judgment of the Apex Court in 1970 (1)

SCC 761 and the judgment of the Bombay High Court reported in AIR 1972 Bombay 326. He would indeed submit that the purport of the order

dated 02.12.2011 was to confer rights on the occupants / lessees, whose properties were taken in road widening, that they would all be given the

benefit of freehold in respect of all the lands, which they held and this right is not confined to the equivalent of the property, which was taken over.

He drew our attention to Clause 11 of order dated 02.12.2011 in this regard. It is also contended that under the policy, which is put forth by way

of redevelopment, read with the order dated 02.12.2011, what is contemplated is that the appellants and other similarly situated persons would be

relocated by way of rehabilitation and this is to be on the condition that they got the land made freehold by paying the balance amount and they

should also make over to the Government the amount, which was paid to them by the Land Acquisition Collector as the value of the property, but

it is pointed out that there is great inequity insofar as under the said Policy, if the property, which is given to them, is in excess of what is taken over

from them, then for the excess extent of the property, they are obliged to pay at the circle rate to the Government.

13. On these submissions, Sri Vinay Garg would reiterate that there is no basis to set aside the impugned order and to remit it for reconsideration

as the matter was argued threadbare before this Court and the arguments would reveal that they are bereft of any merit as no legal right of the

appellants existed for claiming freehold as claimed and as the District Magistrate has vested only those properties, which were not the subject

matter of the demolition. There can be no question of applying the principles of natural justice in such a scenario. No other order could have been

passed, runs the argument. As regards the plea of res judicata and the absence of adjudication in the earlier round of writ petition, it is submitted

that it is open to the appellants to take the plea of estoppel, which they have, even according to the judgments relied upon by the appellants. He

would submit that the principle of res judicata in a case other than the civil suit is not governed as such by Section 11 of the CPC. Even Section 11

of the CPC does not create principles of res judicata, but they are only enacted in recognition of the principle of res judicata, which is a principle of

repose, which means that a man should not be vexed twice. In writ jurisdiction, the Courts are not shackled by the requirements in Section 11 and

having regard to the course of litigation indulged in by the appellants, this Court may not grant relief in this writ petition. In regard to the decisions

relied upon by the appellants relating to the need to communicate an order, he would distinguish them and also submit that these decisions

recognize the principle that what is required is knowledge, which is either actual or constructive and it is clear that there was knowledge with the

appellants. The petitioners in Writ Petition (M/S) No. 694 of 2014 are confronted with res judicata, whereas petitioners in Writ Petition (M/S)

No. 2929 of 2013 are confronted with constructive res judicata.

14. At a late stage, Mr. Gupta, learned counsel for the appellants admitted that the impugned order dated 07.08.2013 was indeed produced in the

counter affidavits of both the State and the MDDA in March / April, 2014. Appellants expressed their regret at the statement in the writ petition

contained in paragraph 29, which we have extracted.

15. We would think that the following points will arise for us to decide the case: (I) Whether there is laches in filing the writ petition? (II) What is

the true purport of the order dated 02.12.2011? (III) Whether the writ petition was barred by the principle of res judicata or constructive res

judicata? (IV) Is the impugned order dated 07.08.2013 passed by the District Magistrate vitiated for the reason of that there is violation of natural

justice? or otherwise? (V) Was the order of the District Magistrate afflicted by vice of bias as the very person, in his capacity as the Vice

Chairman of the MDDA, recommended for vesting of the land recently. (VI) Whether the conduct of the appellants, including making false

averments, is sufficient to non-suit the appellants. (VII) Whether there is abandonment of relief relating to enforcement of order dated 02.12.2011?

(VIII) The effect of principles of Order 2 Rule2? (IX) Whether there is rejection of applications of predecessorin-interest of appellant Nos. 1 to 4

and appellant No. 8, and its effect and conduct of the appellants including making false averments? Laches

16. There is no period of limitation as such unlike the civil suit, within which, a writ petition is to be filed. The issue of delay is one, which is to be

determined on the facts of each case. The writ petition filed beyond the period of three years should ordinarily not be entertained. Since there is no

absolute bar in the sense that the petition filed beyond the period is peremptorily liable to be dismissed, the position would appear to be that the

Court would indeed insist on an explanation for not approaching the Court within a reasonable period. As to what is the reasonable period, it

would again vary on case to case. If there is a reasonable explanation for not approaching the Court in the facts, the Courts have not been loathe in

grating relief in appropriate cases, despite seemingly long delay. Another important aspect, which the Court may bear in mind, is the impact of

grant of relief in a delayed matter on the third party rights. The Court also would bear in mind impact of delay viz.-a-viz the rights of the

respondents to the petition. Subsequent developments may erode the right of the writ applicant and since the jurisdiction under Article 226 of the

Constitution is discretionary, as much as it is extra ordinary, the ultimate guide for the Court would be its innate sense of justice and it would, in

substance, boil down to a self-imposed limitation to be exercised wisely on facts of each case. The Court would be astute to prevent the

miscarriage of justice and the guiding light would be to further the cause of justice.

17. We would, in this connection, have to explore the arguments of the parties centered around the actual date, on which the appellants came to

know of the order and the contention of the appellants about the absence of the formal communication of the order dated 07.08.2013 passed by

the District Magistrate.

18. Writ Petition (PIL) No. 87 of 2012 was filed on 27.09.2012. The High Court asked the MDDA to resubmit the redevelopment plan to the

Government on 27.05.2013. The plan was submitted on 05.06.2013 to the Government. The Government approved the plan on 08.07.2013.

Within a week, on 15.07.2013, the appellants came to be impleaded in Writ Petition (PIL) No. 87 of 2012. It is noteworthy that the

Government"s approval to the redevelopment plan was also adverted to in the order impleading the petitioner. We extract the order dated 15th

July 2013 as under: ""The Impleadment application and the intervention applications are allowed. The newly impleaded parties and the interveners

are permitted three weeks" time to file their counter affidavit, if any, to the writ petition. Rejoinder affidavit thereto may be filed within two weeks

thereafter. Learned Standing Counsel has submitted that a formal approval to the plan, submitted by the MDDA, has been granted by the State

Government and some time is required for the State Government to take further action thereon. In order to enable the State Government to do the

needful, we adjourn this matter for six weeks. Supplementary affidavits and the rejoinder affidavit filed are accepted on record and applications

made therefor are disposed of. List six weeks hence.

19. A counter affidavit was filed on 06.10.2013 and, therein, it was expressly stated that Nazul land has been vested and the impugned order of

the District Magistrate dated 07.08.2013 was also filed. This is the first occasion, according to the MDDA, with reference to which, it attributes

notice of the impugned order to the appellants. The case of the appellants, on the other hand, is that the copy of the affidavit was not served on

them. The copy of the affidavit was apparently only served on the petitioner in the writ petition and another. The certified copy of the affidavit is

also shown to us indicating the same.

20. Ordinarily, when a counter affidavit is filed, unless the Court, otherwise, directs or the Rule so prescribes, the affidavit of a respondent is not

served on another respondent. We would think that there is merit in the contention of the learned counsel for the appellants that the said affidavit as

such was not served on them, going by the endorsements, which have been made on the affidavit and we can safely conclude that it was not so

served. This is despite Sri Vinay Garg, learned counsel for the second respondent drawing our attention to the pleading to be found in the affidavit

filed by the appellants before the Hon''ble Apex Court in the proceedings wherein the appellants took the contention that in connection with this

affidavit, no opportunity was given to them to file a reply affidavit, which implied that they have been served with the affidavit. We would think that

on the face of the affidavit, there is nothing to show that the same was served on them as such. It may be true in point of fact that they may be

aware of the order, but to impute actual or constructive notice, in our view, it may not be sufficient. If there are valuable rights affected then there is

need to clearly impute them with notice either actual or constructive.

21. Passing on to the next stage, at which, notice of the said order could be imputed, the matter reached the Hon''ble Apex Court by way of

Special Leave Petitions filed by the appellants. Therein, a counter affidavit is filed on behalf of the MDDA. In the same, we notice that ''at Page

399 of the Special Appeal Paper Book'', the following is shown against the date 07.08.2013: ""The District Magistrate, exercising the powers

vested in him under the Uttarakhand Nazul Policy, 2009, accepted the proposal of the MDDA and declared the vesting of Nazul Land in the State

Government for its use in Chakrata Road Redevelopment Plan.

22. Still further, at page 400 of the Special Appeal Paper Book, there is reference to the affidavit dated 06.10.2013 being filed by the MDDA in

the High Court narrating the position as mentioned above, inter alia. The actual copy of the affidavit dated 06.10.2013, without its Annexures, was

produced as Annexure CA-13. Again, at Page 411 of the Special Appeal Paper Book, reference is made to the order dated 07.08.13, by giving

its number and date, and also the copy of the said letter dated 07.08.2013 is stated to be enclosed with Annexure SA-6. At Page 415 of the

Special Appeal Paper Book, we notice the rejoinder affidavit of the appellants.

23. It is noteworthy that in the Hon''ble Apex Court, the MDDA has produced a copy of the affidavit dated 06.10.2013 without its Annexures

and, therefore, the impugned order dated 07.08.2013 was not produced as such, but, at the same time, there is express reference to the said order

and, certainly, the appellants must be attributed with knowledge generally about passing of such an order. Substance of its contents could also be

attributed to the appellants, but the actual contents of the order as such could not be attributed to the appellants and the order itself is not also

produced. As such, it is quite clear that in this context, we would have to refer to some of the case law, which is referred to by the parties and

which is relied on by the appellants and sought to be distinguished by Sri Garg.

24. In Assistant Transport Commissioner, Lucknow and others vs. Nand Singh reported in (1979) 4 SCC 19, the issue arose under the U.P.

Motor Vehicles Taxation Act, 1935 and the question was, what is the starting point of limitation for an Appeal under Section 15 of the said Act.

The order sought to be impugned was communicated in the letter dated October 20/24, 1964 by the RTO, which is received on 29th October.

The Appeal was beyond 30 days of the date of the order, but within the period from the date of receipt. The Court proceeded to hold as follows:

2. In our opinion, the judgment of the High Court is right and cannot be interfered with by this Court. Apart from the reasons given by this Court

in the earlier judgment to the effect that the order must be made known either directly or constructively to the party affected by the order in order

to enable him to prefer an appeal if he so likes, we may give one more reason in our judgment and that is this : It is plain that mere writing an order

in the file kept in the office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order

is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the

authority to say that the party affected must be deemed to have known the order. In a given case, the date of putting the order in communication

under certain circumstances may be taken to be the date of the communication of the order or the date of the order but ordinarily and generally

speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively,

otherwise not. On the facts sated in the judgment of the High Court, it is clear that the respondent had no means to know about the order of the

Taxation Officer rejecting his prayer until and unless he received his letter on October 29, 1964. Within the meaning of Section 15 of the U.P.

Motor Vehicle Taxation Act that was the date of the order which gave the starting point for preferring an appeal within 30 days of that date.

25. An order to be treated as communicated in the context must be made known. The knowledge could be either direct or constructive. It is

sufficient that the party affected must be deemed to have known the order. The court also took the view that the date of putting the order in

communication, under certain circumstances, could be taken as the date of communication of the order and even the date of the order, but

generally, knowledge must be attributable to the person affected. He may have knowledge either directly or constructively. In the facts of the case,

the Court took the view that the respondent had no means to have received the letter.

26. In Collector of Central Excise, Madras vs. M/s M.M. Rubber and Co., Tamilnadu reported in 1992 Supp (1) SCC 471, the question arose,

as to whether the limitation under Section 35E(3) of the Central Excises and Salt Act, 1944 commenced from 28.11.1984 or 21.12.1984. The

Collector''s Application was rejected finding it to be beyond one year from 28.11.1984. Reliance is placed by the appellants on Paragraph 13,

which reads as follows: ""13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be

made aware of passing of such order. Therefore courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts

from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that

the parties affected by it have a reasonable opportunity of knowing of passing of the order and what is contains. The knowledge of the party

affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have

been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of

appealing against it or otherwise having it set aside. This is based upon, as observed by Rajmannar, C.J. in Muthia Chettiar v. CIT ILR 1951 Mad

815 a salutary and just principle"". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the

particular statute, but it is so under the general law.

27. In particular, emphasis is laid to the very last sentence of the paragraph to contend that this is essentially a manifestation of the general law and,

therefore, applies even to the facts of the case and, on the other hand, Sri Garg drew our attention to the following sentence in Paragraph-5: ""5.

...Section 35 of the Act provides for an appeal by a person aggrieved by any decision or order passed under the Act by a Central Excise Officer

lower than a Collector of Central Excise and that such an appeal will have to be filed ""within three months from the date of the communication to

him of such decision or order.

28. We may also advert to paragraph 12, which reads as under: ""12. It may be seen therefore, that, if an authority is authorised to exercise a

power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefor. The order or

decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed

by him. The date of such order or decision is the date on which the order or decision was passed or made : that is to say when he ceases to have

any locus paetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left

his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining

whether the power has been exercised within the prescribed time.

29. In Chattisgarh State Electricity Board vs. Central Electricity Regulatory Commission and others reported in (2010) 5 SCC 23, the issue arose

under Sections 111(2) & 125 of the Electricity Act, 2003 and the Court, inter alia, held as follows: ""42. While rejecting the argument, Rajamannar,

C.J. referred to earlier decisions in Secy. of State for India in Council v. Receiver ILR (1911) 34 Mad 151 and Swaminathan v. Lakshmanan

Chettiar AIR 1930 Mad 490 and observed : (Muthiah Chettiar case AIR 1951 Mad 204, AIR p. 205, para 3) ""3. ...The only question that we

have to decide is as to whether there is anything in the reasoning of the learned Judges in Secy. of State for India v. Receiver ILR (1911) 34 Mad

151 & Swaminathan v. Lakshmanan Chettiar AIR 1930 Mad 490, which makes the application of the rule laid down by them dependent on the

provisions of a particular statute. We think there is none. On the other hand, we consider that the rule laid down by the learned Judges in the above

two decisions- and we are taking the same view-is based upon a salutary and just principle, namely, that if a person is given a right to resort to the

remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier that that on which the party

aggrieved actually knew of the order or had an opportunity of knowing the order and therefore, must be presumed to have had knowledge of the

order.

30. A conspectus of the above decisions would lead us to hold the view that the decisions have been rendered by the Hon''ble Apex Court in the

context of statutes giving right to appeal or revision against orders, which are impugned and they contemplated communication of the order. An

order would not be effective, if it is merely signed and kept with the officer as mentioned and kept in the file as it would not be an order in the eyes

of law. In some statutes, the appellate proceedings are validly commenced only with the certified copy.

31. As far as this case is concerned, for challenging the order under Article 226, there is no need to obtain any certified copy as such. Quite

clearly, the appellants could be attributed with the knowledge of passing of the order. It is not a case, where the order was not made known, at

least with the filing of the affidavit before the Hon''ble Apex Court. Appellants must, therefore, be attributed with the knowledge of passing of the

order. The appellants cannot be attributed with knowledge of the actual contents of the order. The moot question would be, having been equipped

with the knowledge of the passing of the order and the impact on its rights, would it be open to the appellants to say that it would ignore it or

would it not have been open to the appellants to apply for the copy of the order, be it under the Right to Information Act and to get a copy of the

same and challenge the order. We may, before we finally pronounce on the issue, also pass on to the next stage, at which the knowledge is

attributed. Writ Petition (PIL) No. 87 of 2012, to which the appellants admittedly were parties, came to be disposed of by this Court on

27.12.2013. In the said judgment, there is express reference to the dates and the order dated 07.08.2013, along with its numbers, has been

expressly referred to and extracted. The same reads as follows: ""07.08.2013 The District Magistrate by its order No. 907/Nazul-2013 dated

7.8.2013 accepted the proposal of the MDDA and declared the vesting of the Nazul land in the State Government as per the Nazul Policy, 2009

for its use in Chakrata Road Redevelopment Plan. The copy of the letter No. 907/Nazul-2013 dated 07.08.2013 is enclosed herewith as

Annexure SA-6.

32. Thus again, here also, we find that the appellants must be attributed with knowledge of passing of the order though they may not have been

served with the copy as such. On the other hand, we must also notice the stand of the appellants regarding this aspect. It is contended that the

appellants filed a writ petition before this Court and it is pointed out that no counter affidavit has been filed, nor has there been any reference to

passing of the order dated 07.08.2013. Why the appellants should be mulcted with the knowledge of contents of the order, which was never as

such communicated? Reverting back to the case of the respondent, it is pointed out that the Court may also see the pleadings regarding the

manner, in which, the appellants came to know of the order. In the writ petition, it is stated as follows: ""29. That the petitioners came to know

about the impugned order passed by the District Magistrate on 07- 08-2013 recently when Rajendra Singh again filed a Writ Petition (P.I.L.) no.

177 of 2014 in this Hon''ble court which was listed on 13.11.2014 after annexing the proposal sent by Vice Chairman-MDDA and the order

passed by the District Magistrate - Dehradun, seeking directions from the Hon''ble court for ensuring that Land Acquisition process of acquiring

properties at Chakrata Road under the purported purpose of Redevelopment of Chakrata Road is completed timely.

33. It is pointed out that still further the appellants have filed an affidavit, wherein they have stated that they got a copy of the order by filing an

Application under the Right to Information Act on 22.12.2014. It is pointed out that even according to the averments of the appellants, the order

was served on them on 29.12.2014. The question is posed, if that is so, how the writ petition was filed on 20.12.2014 producing the order as

Annexure-12.

34. It is at this juncture that it becomes pertinent to notice the admission, which came late in the day by Mr. Gupta, learned counsel for the

appellants that, indeed, counter affidavits were filed by the State and the MDDA in the earlier writ petitions, wherein they have expressly referred

to the impugned order dated 07.08.2013 and, what is more, produced the actual order. It is, no doubt, true that this is a statement, which was

made by the appellants and this was not as such pointed out by either the State or by the MDDA. Apparently, the submission of the appellants is

that mistakes are made and it is a bona fide mistake. The fact of the matter is that not only could the appellants be attributed with the knowledge of

the impugned order as we have observed earlier, the order itself has been made available to them by the filing of the counter affidavits. This also

shows that the statement contained in paragraph 29, which we have extracted, is clearly false. No doubt, there is a case for the appellants that the

court may also look at it from the point of view of the effect of principle of laches. Learned counsel would submit that the delay is not so much that

the case should be thrown out on the ground of laches.

35. There is also the issue of the conduct of the appellants in this matter insofar as the appellants have made a definite plea as contained in

paragraph 29 regarding the time of knowledge of the impugned order, which is completely inconsistent with the true facts. We will finally revert

back to the issue later. Whether the impugned order is bad for bias:

36. Whether the doctrine of necessity will apply in regard to the action of the District Magistrate in passing the impugned order, even though he

was also the Vice Chairman of the MDDA and only in which latter capacity, request was made for vesting of the land? The principle of bias is a

principle to secure the ends of justice. The general principle is that an Adjudicator, be it a Judge or otherwise, must not be biased. Bias can be

pecuniary; it can be subject bias or any other form of bias, which prevents him from rendering a dispassionate and impartial decision. In this case, it

is true that the District Magistrate, who passed the order, was also earlier holding the post as Vice Chairman of the MDDA. On 02.07.2013, in

the said capacity, he had directed the District Magistrate to consider the vesting of Nazul land. While so, he came to hold the post of District

Magistrate on 25.07.2013. It is thereafter that he passed the impugned order on 07.08.2013. This is sought to be impugned on the ground that

there is bias as the same person has made the request of vesting who had passed the order for vesting. On the other hand, learned counsel for the

respondent would seek shelter under the doctrine of necessity and would further submit that under Clause 10 of the Nazul Policy, under which, the

impugned order was passed, only the District Magistrate could pass the order. This is, besides pointing out the factual background leading to the

order passed by the High Court and approval of the Government for redevelopment.

37. It is the case of the appellants that the proposal was sent by the Vice Chairman on 02.07.2013 for seeking vesting, but the District Magistrate,

Dehradun did not take any decision till he proceeded for temporary duty for almost a month. He proceeded for temporary duty for a short period.

This fact was known to the Government and, presumably, the Vice Chairman of the MDDA assumed additional charge of District Magistrate,

Dehradun. It is within 14 days of so assuming the charge that he proceeded to pass the order on his own proposal without opportunity of hearing.

In this regard, appellants contended that there is bias and relied on judgment of the Apex Court in the case of Ranjit Thakur vs. Union of India &

others, reported in (1987) 4 SCC 611. Therein, the court took the view that a judgment, which is a result of bias, inter alia, is a nullity and the trial

coram non-judice. The court, further, held that proper approach for the judge is not to look at his own mind and ask himself, however honestly,

Am I biased?""; but to look at the mind of the party before him. The court also, apparently, approved the principle that the question is not whether

the decision maker was or was not biased; the question is whether there is a real likelihood of bias.

38. In Ashok Kumar Yadav and others vs. State of Haryana and others, reported in (1985) 4 SCC 417, the court, inter alia, took note of the

basic principle that ""justice must not only be done, but must also appear to have been done"". It is not necessary to establish bias. It is sufficient if it

is established that there was a reasonable likelihood of bias.

39. In dealing with the doctrine of necessity, which was canvassed by the learned counsel for the MDDA, appellants referred to the judgment of

the Apex Court in Election Commission of India & another vs. Dr. Subramaniam Swamy & another, reported in (1996) 4 SCC 104. The

respondent therein petitioned the Governor against the then Chief Minister complaining that she was disqualified. The Governor made over the file

to the Election Commission, as was required. A contention was raised by the then Chief Minister that the Chief Election Commissioner was biased

having regard to the intimate relationship between the respondent and him, apart from the fact that the respondent''s wife was the lawyer of the

Chief Election Commissioner in a damages suit. The Division Bench of the Madras High Court took the view that, in view of the appointments of

two Election Commissioners under the Amendment Act 4 of 1994, the doctrine of necessity cannot be applied since the decision could be taken

by the Election Commission, if need be, by majority. The Apex Court took the view that the Governor is bound to decide in terms of the opinion

of the Election Commission and none else, not even the Council of Ministers. In the case of a multi-member body, Article 324(3) expects the Chief

Election Commissioner to act as the Chairman of that body. It was, further, found that the provisions of the Constitution do not make it imperative

for the Chief Election Commissioner to participate in each and every decision that the Election Commission is required to make under the

Constitution. The court, further, took the view that, in view of the impact an adverse decision would have on the then Chief Minister, even

prudence demanded that the Chief Election Commissioner should have recused himself from expressing any view in the matter. The court,

thereafter, proceeded to direct that the Chief Election Commissioner should call a meeting of the Election Commission to adjudicate the issue

relating to disqualification of the then Chief Minister. If the two Election Commissioners were agreed, the opinion was to be communicated; if,

however, the two did not agree, the doctrine of necessity, it was held, would compel the Chief Election Commissioner to express his views so that

majority opinion could be communicated to the Governor. The court, further, held as follows in regard to the doctrine of necessity: ""The law

permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. The

doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases

of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable

situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. In such cases the doctrine of necessity

comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the

former as it is the only way to promote decision-making.

40. In Amar Nath Chowdhury vs. Braithwaite and Co. Ltd. & others, reported in (2002) 2 SCC 290, following a domestic inquiry, the appellant,

who was an employee of the respondent Company, was removed by the Chairman-cum-Managing Director. The appellate authority was its Board

of Directors. In the appeal preferred by the appellant employee, the Chiarman-cum-Managing Director participated in the deliberations and

dismissed the appeal by a non-speaking order. The question was, whether an authority could sit in appeal over its own judgment. The court, inter

alia, held as follows: ""In view of the definition of the expression ""Board"" in Rule 3(d) of the Company''s Conduct, Discipline and Appeal Rules, the

Board could have constituted a committee of the Board / management or any officers of the Company by excluding the Chairman-cum-Managing

Director of the Company and delegated any of its powers, including the appellate power, to such a committee to eliminate any allegation of bias

against such an Appellate Authority. Therefore, the respondent''s reliance on the doctrine of necessity in the present case is totally misplaced.

41. It is the case of the appellants that doctrine of necessity should not be permitted to be invoked as the court may bear in mind the following

facts: (i) The District Magistrate was not transferred or relieved from his charge as the District Magistrate and he had only proceeded on

temporary duty the duration of which was known. (ii) The State has many IAS Officers, who could easily have taken the additional charge if there

was any urgency to pass the order. (iii) There was no urgency and there was no direction from the court, nor any approved re-development plan.

There was also no urgency for the reason that re-development plan could not have been implemented without resorting to the acquisition under the

Land Acquisition Act, which was initiated only on 11.10.2013. (iv) In such circumstances, the order betrays bias. (v) The person, who was

holding full-time charge, was not relieved of the said charge and appointed as full-time District Magistrate. The Vice Chairman was just holding

additional charge of the District Magistrate and, therefore, the incumbent could have waited and the regular incumbent could have been allowed to

resume the charge.

42. The person, who takes a decision, which has an impact on the legal rights or even the legitimate expectations of persons, is expected to act

impartially. It is the basic postulate of law that the one, who decides, must have an open mind. In this case, the Vice Chairman, in his capacity as

the Vice Chairman and having regard to the developments, had written a letter to the District Magistrate to take steps to vest the land. This is not a

case of pecuniary bias. In the case of pecuniary bias, howsoever small the bias is, it is sufficient to invalidate the decision. This is one aspect of the

matter. Further, the only person, who could take a decision under Clause 10 of the Nazul Policy, was the District Magistrate. Any other person

taking the decision would be acting in an unauthorized manner. It may be true that the regular District Magistrate had proceeded on temporary

duty. The contention that there are other IAS officers and, therefore, this matter should have been made over to some other IAS Officer for his

decision, does not appeal to us. It is true that the same person, in his capacity as the Vice Chairman of the MDDA, had requested the District

Magistrate to consider vesting of nazul land keeping in view the High Court''s order. We must also proceed on the basis that, in the matter of

invoking the principle of bias, the question to be asked is not whether the person was actually biased or not. The question is, equally, not whether,

having asked himself the question whether he was biased, he could answer in negative. The question should rather be addressed as one arising in

the mind of the seeker of justice or the person who is affected by the decision as to whether he would think that there are reasons that there is

reasonable likelihood of bias.

43. Keeping in mind these decisions, it is clear that the law permits official action to be taken in certain circumstances, though it may not be

otherwise lawful. The District Magistrate is the only authorised person to take the decision under Clause 10 of the Nazul Policy. At that point of

time when the decision was taken, he was the only competent person to take the decision; he could not have therefore abdicated taking decision.

Perhaps the only contention that could be taken was that he could keep the matter pending, but we would think we need not stretch the doctrine of

bias to that extent, when after narrating the events, which include the order passed by the High Court in Writ Petition (PIL) No. 87 of 2012, the

approval granted, the redevelopment plan, besides of course, the report of the Disaster Management Department that the Nazul land in question

was indeed required for public need. In such circumstances, we would think that the District Magistrate being the only authority competent to take

the decision, the decision cannot be attacked on bias and we repel the said argument. The plea of res judicata, constructive res judicata, Order II

Rule 2 and Abandonment:

44. Since these are connected issues, we think it appropriate to deal with the same under this common heading.

45. As far as the plea of res judicata is concerned, the fundamental principle requisite to its applicability is that the matter must have been heard

and finally decided. This means that the matter must have been heard and decided by a competent court in the earlier proceedings. When a

consent order is passed and the case is disposed of on the basis of consent, it cannot attract the principle of res judicata as such. The plea of res

judicata is based on the judgment in Writ Petition (M/S) No. 694 of 2014, Writ Petition (M/S) No. 2929 of 2013 and Writ Petition (M/S) No.

686 of 2014. While it is true that there was a prayer akin to the relief sought in this writ petition, namely, to enforce the terms of order dated

02.12.2011, the learned Single Judge disposed of the writ petitions as follows: ""In all the writ petitions, Notification dated 11.10.2013 issued

under Section 4 invoking Section 17 (4) exempting application of Section 5A of the Land Acquisition Act, 1894 is under challenge. Mr. R.C.

Arya, learned Standing Counsel for the State of Uttarakhand and Mr. Vinay Garg, Advocate appearing for MDDA, fairly submit that proposal to

widen the Chakrata Road was prepared way back in the year 2011, however, impugned Notification was issued on 11.10.2013 under Section 4

invoking Section 17 (4) exempting application of Section 5A of the Act. They further submit that in view of judgment passed by this Court in

WPMS No. 1980 of 2007 (Hari Har Singh Vs. State of Uttarakhand) on 26.03.2014, urgency clause exempting application of Section 5A of the

Act ought not to have been invoked. Therefore, petitioners may file their objections under Section 5A of the Act within thirty days from today

taking all the pleas therein including the requirement and implementation of development plan and thereafter, State Government shall pass

appropriate order thereon in accordance with law, if need be, thereafter, notice Section 6 shall be issued. Learned counsel for the petitioners

submit that present petitions may be disposed of in the light of statements made by Mr. R.C. Arya, learned Standing Counsel appearing for the

State of Uttarakhand and Mr. Vinay Garg, Advocate appearing for MDDA. Ordered accordingly.

46. Therefore, clearly, this was a consent order. The court has not applied its mind over the issue and rendered its findings in the matter. It cannot

be treated as a case, which was finally heard and decided. No doubt, appellants filed a review, which was directed against the order confining itself

to the quashing of Section 4 Notification; the learned Single Judge allowed the review; and Section 4 Notification is quashed. Special Appeals

carried against the same were successful and the Division Bench finally, however, while set aside the quashing of Section 4 Notification, directed

the implementation of the original judgment of the learned Single Judge by which right of hearing under Section 5A of the Land Acquisition Act was

vouchsafed. Therefore, the original consent order came to be reiterated by the judgment of the Division Bench. Therefore, we would think that it

cannot be treated as a case, where the matter was finally heard and decided.

47. In Pulavarthi Venkata Subba Rao & others vs. Valluri Jagannadha Rao, reported in AIR 1967 SC 591, the Apex Court held as follows: ""10.

The appellants then seek to reach the same result by invoking the principle of res judicata. It is contended that the earlier decision amounts to res

judicata and the respondentswere not entitled to raise the same issue which by implication must be held to be decided against them by the

compromise judgment and decree. In the alternative, it is contended that the earlier compromise decree creates an estoppel against the

respondents because the appellants at that time had shown some concession in the amount which they were claiming and a decree for a lesser

amount was passed. This estoppel was said to be an estoppel by judgment. In our opinion, these contentions cannot be accepted. The Act as

amended confers this right upon petty agriculturists to save them from the operation of loans taken at usurious rates of interest. No doubt the

conduct of respondents in omitting to press the claim for reduction of the amount of the claim on the first occasion is significant, but this did not

Constitute res judicata, either statutory or constructive. The compromise decree was not a decision by the Court. It was the acceptance by the

Court of something to which the parties had agreed. It has been said that a compromise decree merely sets the seal of the court on the agreement

of the parties. The court did not decide anything. Nor can it be said that a decision of the court was implicit in it. Only a decision by the court could

be res judicata, whether statutory under S.11 of the Code of Civil Procedure, or constructive as a matter of public policy on which the entire

doctrine rests. The respondents claim to raise the issue over again because of the new rights conferred by the Amending Act, which rights include,

according to them, the re-opening of all decrees which had not become final or which had not been fully executed. The respondents are entitled to

take advantage of the amendment of the law unless the law itself barred them, or the earlier decision stood in their way. The earlier decision cannot

strictly be regarded as a matter which was ""heard and finally decided"". The decree might have created an estoppel by conduct between the parties;

but here the appellants are in an unfortunate position, because they did not plead this estoppel at any time. They only claimed that the principle of

res judicata governed the case or that there was an estoppel by judgment. By that expression, the principle- of res judicata is described "in English

law. There is some evidence to show that the respondents had paid two sums under the consent decree, but that evidence cannot be looked into in

the absence of a plea of estoppel by conduct which needed to be raised and tried. The appellants are, however, protected in respect of these

payments by the proviso to Cl. (iii) of S. 16 of the Amending Act.

48. We would think that, having regard to what is stated in paragraph 10 of the judgment, which we have extracted above, there can be no scope

for applying either the principle of res judicata or even of constructive res judicata on the basis of the consent judgment, which was pronounced.

49. Then there remains the question, whether the respondents are entitled to succeed on the plea of estoppel between the parties. A judgment,

which is pronounced on consent, may not be res judicata or constructive res judicata; however, it can create an estoppel by conduct. We noticed

from the judgment of the Apex court that the court in the said case repelled the plea of estoppel on the finding that the plea of estoppel was not

taken by the party in the said case and, therefore, they could not succeed. Therefore, the case of the appellants in this regard is, firstly, there is no

plea. In this regard, the contention taken by the learned counsel Mr. Vinay Garg is that the writ petition was disposed of at the admission stage and

there was no opportunity to raise the plea and, furthermore, he would rely on the judgment of the Apex Court in ITC Ltd. vs. Commissioner of

Central Excise, New Delhi & another, reported in (2004) 7 SCC 591. Therein, the court, inter alia, held as follows: ""18. Doubtless the principle of

res judicata is a fundamental doctrine of law that there must be an end to litigation. (See Daryao v. The State of U.P., [1962] 1 SCR 574 but the

plea of res judicata has to be specifically and expressly raised. (See : Medapati Surayya v. Tondapu Bala Gangadhara Ramakrishna Reddi, AIR

1948 PC 3. This view has been recently reiterated in V. Rajeshwari v. T.C. Saravanabava, (2003) 10 Scale 768, where it is said that the

foundation of the plea of res judicata must be laid in the pleadings. If this was not done, no party would be permitted to raise it for the first time at

the stage of the appeal. The only exception to this requirement is when the issue of res judicata is in fact argued before the lower Court. In this case

not only had the plea not been taken by the Revenue at any stage before any of the authorities, but arguments exactly to the contrary had been put

forward by the respondent. We will not permit the plea to be raised now. In the circumstances, it is not necessary to consider the other arguments

urged on the appellant to counter the respondent''s submission on the applicability of the principles of res judicata.

50. Therefore, it is contended that, since this matter is being argued expressly, it is sufficient. In regard to the said contention of the respondent, the

case of the appellants is that the principle of pleadings cannot be given the go-bye. In the facts of this case, even in the counter affidavit filed in the

appeal, there is no plea as such taken.

51. There is another contention also taken by the appellants and that is that the judgment must itself be read to find out what it purports to set out.

Does it set out a compromise in regard to the plea relating to enforcement of order dated 02.12.2011? Does it set out on consent that the order

dated 02.12.2011 is not to be enforced? There is silence in this regard. Apart from the absence of pleadings as such, the judgment does not create

an estoppel having regard to its terms. It is here that the learned counsel for the respondents would seize upon Explanation IV to Section 11 and

contend that when a plea is raised and the judgment is silent, it must be treated as having been refused. In this regard, a judgment rendered by us in

writ jurisdiction is placed before us, namely, Writ Petition (MB) No. 1 of 2015 and Writ Petition (MB) No. 2 of 2015. There, no doubt, we had,

in the facts of the said case, held inter alia as follows: 37. We notice that the petitioner had approached earlier seeking a prayer for inclusion of his

khasra numbers in the Notification. We have noticed from the judgment, which we have extracted, that the Court was not inclined to grant the

benefit. In fact, the Court disposed of the writ petition in terms of the decision in a writ petition filed by another unit, i.e. M/s Sant Steel and Alloys

Pvt. Ltd. We have referred to the said judgment also. The Court proceeded to take the view that, even if there is a mistake in not including certain

khasra numbers, the Court would be encroaching on the policy matters, if it was to be persuaded to issue a direction to include specified khasra

numbers. The Court, further, discountenanced the plea of discrimination. Thereafter, the Court closed the matter. Finally, the Court, however,

proceeded to direct that the decision on the representation be made known to the petitioner therein. The earlier writ petition filed by the petitioner,

as we have already noticed, was also disposed of on the same lines. The effect of the same would be that the prayer for inclusion of the khasra

numbers of the petitioner must be treated as having been turned down. A relief if it is not granted or if the judgment is silent regarding a particular

relief; it is, both, in accordance with the principle of res judicata enumerated in Section 11 of the Code of Civil Procedure and also in accordance

with general principle of res judicata, which, undoubtedly, applies to writ petitions also; it must be taken to have been impliedly refused and the bar

of res judicata applies. In this case, the reasoning given by the Court would leave us in no doubt that the Court was not inclined to grant the relief

as sought for. In fact, the Court had disposed of the writ petition in terms of the earlier judgment, wherein the Court had closed the matter.

52. That was a case, where there was a decision by the court on merits and not on consent and a particular prayer was refused by implication and,

hence, it was held to be res judicata; but, in this case, we have first of all noticed that there is no decision. While Section 11 of the Code of Civil

Procedure as such is not applicable to Article 226 and Section 11 only recognizes certain basic principles about the doctrine of res judicata, it is

necessary to advert to the scheme of Section 11. In our view, the purpose appears to be to preclude the court from hearing the matter, which was

directly and substantially in issue in a former proceeding between these parties, which was heard and finally decided by the said court. The

Explanations intend to both clarify and enlarge the scope of the provision. An instance of enlarging the scope of the main provision is contained in

Explanation IV, which provides that a matter, which might and ought to have been made ground of defence or attack in a former suit, is to be

treated as a matter, which was directly and substantially in issue in the suit. Equally Explanation V also purports to deal with the case, where,

though the court has neither granted nor refused expressly a relief, which was sought in the earlier suit, the law deems that in the case of silence in

the matter the relief was refused. Explanation IV sets out the principle of constructive res judicata. We would think that, while it does expand the

principle of res judicata; in that, a matter, which was not decided actually, is still regarded as barred by res judicata though it was not expressly

finally decided by the court, it cannot apply to a case, where there is only a consent decree. This is for the reason that, running as a golden thread

through the provisions, is the principle that the earlier suit must have been decided finally on merits. If a matter is heard and finally decided, then,

provided the conditions are otherwise satisfied, a matter, which could have been raised by the plaintiff or by the defendant (ground of defence or

attack), would be deemed to have been decided. This salutary principle is intended to advance the cause of justice by preventing parties from

omitting or refusing to take up all the contentions, which they ought and might have taken. This principle, itself, is undoubtedly subject to many

limitations, which, for a decision in this case, need not detain us. Suffice it to say, as already noticed, we cannot allow it to be invoked by the

respondents in a case, where the earlier case itself was not finally heard and decided; but, instead, it was disposed of on consent.

53. The fate of the argument based on Explanation V, namely, the plea relating to enforcement of order dated 02.12.2011 not being either granted

or refused raised in the plea of res judicata, cannot be any way different. It is true that the original judgment of the learned Single Judge, as

confirmed finally by the Division Bench, does not reflect any express decision on the prayer; but, we would think that, since the foundation for the

applicability of Explanation V can only be a decision on merits in respect of the other matters, we cannot allow it to be applied, where there is no

decision on merits in the earlier round of litigation. Hence, we reject it.

54. As far as the plea of Order II Rule 2 is concerned, Order II Rule 2 is, indeed, a part of the principle of res judicata and is based on the

principle that no man shall be vexed twice and this is a principle of repose. Order II Rule 2, though not applicable as such to proceedings under

Article 226, is certainly a wholesome and salutary principle, which can and should be applied by the courts on the basis of the general principles of

res judicata, which are applicable to Article 226. It reads as follows: ""R.2. Suit to include the whole claim.- (1) Every suit shall include the whole of

the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to

bring the suit within the jurisdiction of any Court. (2) Relinquishment of part of claim.-Where a plaintiff omits to sue in respect of, or intentionally

relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. (3) Omission to sue for one of

several reliefs.-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits,

except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

55. We may also refer to Order II Rule 3, which reads as follows: ""R.3. Joinder of causes of action.- (1) Save as otherwise provided, a plaintiff

may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of

action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same

suit. (2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate

subject-matters at the date of instituting the suit.

56. Having noticed the aforesaid provisions, we may notice some case-law, which may be relevant. In Maharashtra State Electricity Board &

another vs. National Transport Company, reported in 1992 Mh.L.J. 1505, a Division Bench was dealing with a case, where the earlier suit was

filed by the contractor when the defendant employer suspended the work order apprehending that the plaintiff had committed fraud. The suit was

one for injunction restraining him from cancelling the work. The suit was dismissed for default. Later, the defendant actually found that the work

order was obtained by fraud and he revoked the contract. Thereupon, the contractor filed a fresh suit for damages. It was held that the suit was

not barred by the provisions of Order II Rule 2. The Division Bench proceeded to hold as follows: ""17. This takes us to the question of application

of bar of Order 2, Rule 2 C.P.C. to the claim for damages for breach of contract in this suit in view of Civil Suit No. 344 of 1976 instituted by the

plaintiff for permanent injunction restraining the defendants from cancelling the contract. The cause of action for the earlier suit was the

communication dated 30-5-1976 from the defendant No. 2 for suspending the work until final decision in the matter is taken. In the present suit

damages are claimed for terminating the contract, on the basis of communication dated 28-7-1976. Both the suits undoubtedly arise out of the

same transaction, but there can arise more than one causes of action out of the same transaction. Transaction and cause of action need not be

always identical. The law on the point is well settled. One and the same cause of action cannot be allowed to be split up. What is ''cause of

action''? The phrase is not defined anywhere. But its meaning has been crystilised by judicial pronouncements made from time to time. The leading

case on the point, Mohammad Khalil Khan and others v. Mahbub Ali Mian and others , summarises the principles thus: ""(1) The correct test in

cases falling under Order 2, Rule 2, is ''whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the

foundation for the former suit''. Moonshee Buzloor Ruheem v. Shumsunnisa Begum, 1867(11) M.I.A. 551: 2 Sar. 259 P.C. (supra). (2) The cause

of action means every fact which will be necessary for the plaintiff to prove if traversed in order to support his right to the judgment. Read v.

Brown, 1889(22) Q.B.D. 128: 58 L.J.Q. 120 (supra). (3) If the evidence to support the two claims is different then the causes of action are also

different Brusden v. Hymphrey, 1884(14) Q.B.D. 14: 53 L.J.1.B. 476 (supra). (4) The causes of action in the two suits may be considered to be

the same if in substance they are identical Brussden v. Humphrey, 1884(14) Q.B. 141: 53 L.J.Q.B. 476 (supra). (5) The cause of action has no

relation whatever to the defence that may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

It refers...to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. Miss. Chandkour vs. Partab Singh, 15 I.A.

156 = 16 Cal. 98 P.C. (supra). This observation was made by Lord Watson in a case under section 43 of the Act of 1882 (corresponding to

Order 2, Rule 2), where plaintiff made various claims in the same suit."" Having regard to the above principles, it cannot be said that both suits were

based on identical causes of action. In the former suit cause of action was the threat to cancel the agreement and in the later the cause of action

was the actual cancellation. Evidence in support of the two was also different.

57. We may also notice the decision of the Full Bench of the Bombay High Court in the case of Shankarlal Laxminarayan Rathi & others vs.

Gangabisen Manik Lal Sikchi & another, reported in AIR 1972 Bombay 326. Therein, A was the owner of a theatre. It was leased out to B.

There was an initial suit for eviction and there was a compromise, the effect of which was to increase the rent and to introduce a second lessee.

Thereafter, A filed a second suit, which was withdrawn. A third suit was filed, where A claimed damages for a certain period. The amount

consisted of two items, namely, the revised rent and also the penalty under the agreement, which contemplated penalty when the lessee did not

vacate the theatre when the lease period was over. In the third suit, the court found that the defendants had ceased to be the tenants, but no relief

was granted in respect of possession of theatre. It is, thereafter, that the latter suit, which was the subject matter of the decision, came to be filed

by A, wherein he sought for possession and also damages from the erstwhile lessees. Damages were claimed at the same rate; but it was claimed

for the period subsequent to the period, which was claimed in the earlier suit. The question was, whether Order II Rule 2 barred the latest suit. The

Full Bench, no doubt, took note of Order II Rule 4, which barred joining of cause of action in the suit for recovery of immovable property except

certain claims, which were mentioned therein, which included a claim for mesne profits or arrears of rent and claims for damages for breach of

contract under which the property was held. We notice the following paragraphs of the judgment, which read as follows: ""13. All these rules are to

be found in Order 2 which is entitled ""Frame of Suit"", and that is precisely also the subject of Order 2, Rule 1. Order 2, Rule 1 merely prescribes a

general rule that as far as practicable every suit shall be framed so as to afford ground for final decision upon the subjects in dispute and to prevent

further litigation concerning them. This is more in the nature of a general policy statement than a mandatory provision. it lays down the principle

which underlies the subsequent Rules 2, 3 and 4. The words ""as far as practicable"" indicate that in each case the Court will have to see whether it

was practicable for the plaintiff, so to frame his suit as to include a cause of action which he has omitted or intentionally relinquished. The words

subjects in dispute"" may also be noted. In the subsequent three rules there are several different expressions used such as ""cause of action"", ""claim"",

and ""relief"", and ""obligation"" and it seems to us that only in Order 2, Rule 1, was the generic expression ""subjects in dispute"" deliberately used

because Rule 1 was intended to lay down only a general statement as to the policy of the law. Though some of the causes have in considering this

expression equated it with ""cause of action"", it seems to us that this generic expression ""subjects in dispute"" would equally comprise within it ""cause

of action"" or ""relief"" or ""claim"", as the context may require. 14. The case we have in mind where the expression ""subjects in dispute"" was equated

with ""cause of action"" is to be found in Ramaswami Ayyar v. Vythinatha Ayyar (1903) ILR 26 Mad 760, where the learned Judges put it thus : ""In

our opinion the expression ""the subject in dispute"" signifies the jural relation between the parties to the suit, for the determination of which the suit is

brought. In other words, the object of Section 42 (They were dealing with the Act of 1882. Section 42 is the same as Order 2, Rule 1) is to

require the plaintiff to bring forward his whole case as to the matter of litigation on the question of right involved in the suit and not to require him to

unite all the causes of action which he may have against the defendant in respect of the corpus or object - matter of the suit."" 15. Turning to Order

2, Rule 2, sub - rule (2) gives an option to the plaintiff to relinquish any portion of his claim, but if he so relinquishes, then he incurs a penalty. The

provisions of Order 2, Rule 2, sub - rule (2), would come into play and the penalty prescribed therein is that ""he shall not afterwards sue in respect

of the portion so omitted or relinquished."" Apart from this option, Order 2, Rule 2, sub - rule (1), lays down the mandatory principle that every suit

must include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action. Sub - rule (3) of Order 2, Rule 2, speaks

of more than one relief in respect of the same cause of action in contrast with sub - rule (1) which speaks of the whole of the claim in respect of a

cause of action. It is clear that the combined effect of these sub - rules is (a) that where there is one and the same cause of action, the plaintiff must

sue in one suit for the enforcement of the whole of that cause of action, then he relinquishes or omits to sue in respect of any part of that cause of

action, then he cannot subsequently sue for the part so relinquished or omitted in any other suit, and (b) that although there may be one and the

same cause of action, there may in respect of that cause of action be several reliefs claimable. If there are several reliefs then they must all be sued

for in one and the same suit, unless leave of the court is obtained. If there is an omission to sue for any relief arising out of the same cause of action,

then the plaintiff ""shall not afterwards sue in respect of the portion so omitted or relinquished."" 16. The fundamental postulate for the application of

Order 2, Rule 2, therefore, is that there must be one and only one cause of action in fact before its several provisions can apply. Of course, the

Explanation creates by fiction one and the same cause of action in the case of successive claims arising under the same obligation. Obviously these

successive claims, although arising under the same obligation, will normally give rise to different cause of action but the explanation says that they

are to be deemed to constitute but one cause of action. The illustration itself to Order 2, Rule 2, also makes this clear. The rents for the three years

1905, 1906 and 1907 which are due and unpaid would obviously and normally be regarded as different cause of action having arisen at the end of

each of those respective years, but because of the Explanation they being successive claims arising under the same obligation, they would be

regarded as one and the same cause of action. 17. Order 2, Rule 2, does not require that when a transaction gives rise to several causes of action

they should all be combined in one suit, or that the plaintiff must, if necessary, lay his claim alternatively in the same suit for these different causes of

action. All that O. 2, R. 2, provides is that where there is one and the same cause of action, the plaintiff cannot split up his cause of action and sue

for one part in one suit and for another part in another suit. As the Privy Council put it in Naba Kumar v. Radhashyam , ""the rule in question is

intended to deal with the vice of splitting a cause of action"". Thus, the applicability of O. 2, R. 2, depends upon there being established one and the

same cause of action in the two suits. The defendant who raises the plea must establish that the second suit was in respect of the same cause of

action as the previous suit. Therefore, in the present suit, all we have to determine in order to settle the disputes referred is whether the cause of

action for the subsequent suit for possession was the same as the cause of action for mesne profits or damages in the first suit (Civil Suit No. 36 -

B of 1955). 18. What is a cause of action is now settled beyond any doubt. The classic definition of that expression is that of Lord Justice Brett in

Cook v. Gill, (1873) 8 CP 107. "" ''Cause of action'' has been held from the earliest time to mean every fact which is material to be proved to

entitle the plaintiff to succeed, - every fact which the defendant would have a right to traverse."" 19. Lord Justice Fry put it in the negative by saying.

Everything which, if not proved, gives the defendant an immediate right to judgment, must be part of the cause of action."" This definition is the

basis of all subsequent decisions containing an interpretation of the expression ""cause of action."" It was accepted in Deep Narain Singh v. Dietert,

ILR 31 Cal 274 at p. 282 and by the Privy Council in Mohammad Khalil Khan v. Mohbub Ali Mian at p. 86, para 61 point No. 2. This has been

referred to in several cases as the media upon which the plaintiff asks the Court to arrive at the conclusion in his favour :see the Privy Council case

Chand Kour v. Partap Singh (1889) ILR 16 Cal 98 at p. 102 (PC) and in Hiromal v. Faridkhan, AIR 1915 Sind 35 at p. 36, a case upon which

Mr. Deo strongly relied and in Sheokumar Singh v. Bechan Singh AIR 1940 Pat 76, by Rowland, J. at p. 79. 20. These cases also make it clear

that the cause of action in a suit has no reference to the defence taken in the suit, nor is it related to the evidence by which that cause of action is

established. In Mohammad Khalil Khan''s case to which we have referred above, this point is made in the Judgment of the Privy Council in para

61, point No. (5), as follows :- ""The cause of action has no relation whatever to the defence that may be set up by the defendant nor does it

depend upon the character of the relief prayed for by the plaintiff. It refers .....to the media upon which the plaintiff asks the Court to

arrive at a conclusion in his favour."" 21. The Privy Council followed their earlier decision in (1889) ILR 16 Cal 98 (PC). This decision has been

relied upon also in AIR 1940 Pat 76 at p. 79. Secondly the cause of action must be distinguished from the evidence upon which that cause of

action is proved and though one has no relation to the other, still the nature of the cause of action may be indicated by the nature of the evidence by

which it is supported. This again is made clear in Mohammas Khalil Khan''s case para. 61 at p. 86 in points Nos. 3 and 4 which are put as follows

:- ""(3) If the evidence to support the two claims is different, then the causes of action are also different ..... (4) The cause of action in

the two suits may be considered to be the same if in substance they are identical .....

58. We may also notice that in Inacio Martins vs. Narayan Hari Naik and others, reported in (1993) 3 SCC 123, the court was dealing with a

case, where the first suit was dismissed on the ground that a mere suit for declaration without seeking consequential relief of possession was not

maintainable. The plea of tenancy had not been decided as such in the earlier suit. In the first suit, it was found that the plaintiff, who claimed to be

a lessee, was dispossessed and, therefore, question of grant of injunction did not arise. The plea of declaration, which was raised, was not granted

in view of the provisions of the Specific Relief Act. The court found that the cause of action in the earlier suit was based on the apprehension that

the defendants were likely to forcefully dispossess the plaintiff. The subsequent suit was found based on a distinct cause of action not found in the

earlier suit. In this connection, the court took the view that the subject matter of the suit may have been the very same property, but the cause of

action was distinct and so was the relief claimed. It was found that the difference in the reliefs claimed in the suit cannot be immaterial or irrelevant

and it made all the difference and it was found that it is not barred by Order II Rule 2. The court further held as follows: ""Order 2 Rule 2 CPC is

based on the salutary principle that a defendant or defendants should not be twice vexed for the same cause by splitting the claim and the reliefs.

But the rule does not preclude a second suit based on a distinct cause of action. The doctrine of res judicata differs from the rule embodied in

Order 2 Rule 2, in that, the former places emphasis on the plaintiff''s duty to exhaust all available grounds in support of his claim while the latter

requires the plaintiff to claim all reliefs emanating from the same cause of action.

59. We may also notice the judgment in Arjun Lal Gupta & others vs. Mriganka Mohan Sur and others, reported in (1974) 2 SCC 586. Therein,

the Apex Court held as follows: ""6. There is no question of applying Order 2, Rule 2, CPC when the cause of action for the suit before us is

different from the causes of action in the suits which were compromised. The failure of the defendants to carry out the terms of the compromise

decrees constitutes a part of the cause of action in the suit before us. We, therefore, finding ourselves in agreement with the High Court and trail

Court, dismiss this appeal, but, in the circumstances of the case, the parties will bear their own costs in this Court.

60. In The State of Madhya Pradesh vs. The State of Maharashtra & others, reported in (1977) 2 SCC 288, the Apex Court has held inter alia as

follows: ""The plaintiff will be barred under Order 2 Rule 2 of the Code of Civil Procedure only when he omits to sue for or relinquishes the claim in

a suit with knowledge that he has a right to. sue for that relief. It will not be correct to say that while the decision of the Judicial Committee in Lall''s

case (supra) was holding the field the plaintiff could be said to know that he was yet entitled to make a claim for arrears of salary. On the contrary,

it will be correct to say that he knew that he was not entitled to make such a claim. If at the date of the former suit the plain- tiff is not aware of the

right on which he insists in the latter suit the plaintiff cannot be said to be disentitled to the relief in the latter suit. The reason is that at the date of the

former suit the plaintiff is not aware of the right on which he insists in the subsequent suit. A right which a litigant does not know that he possesses

or a right which is not in existence at the time of the first suit can hardly be regarded as a ""portion of his claim"" within the meaning of Order 2 Rule

2 of the Code of Civil Procedure. See Amant Bibi v. Imdad Husain(2). The crux of the matter is presence or lack of awareness of the right at the

time of first suit. 28. Another reason why the bar under Order 2 Rule 2 of the Code of Civil Procedure cannot operate is that the plaintiff''s cause

of action in the 1956 suit is totally different from the cause of action in the 1949 suit. See Pavana Reena Saminathan v. Palaniappa."" Regarding

petitioners in Writ Petition (M/S) No. 2929 of 2013 not seeking relief as to enforcement of order dated 02.12.2011 and it being barred by

constructive res judicata:

61. In Kewal Singh vs. Smt. Lajwanti, reported in (1980) 1 SCC 290, the Apex Court has held as follows: ""8. Secondly, as regards the question

of constructive res judicata it has no applicable whatsoever in the instant case. It is well settled that one of the essential conditions of res judicata is

that there must be a formal adjudication between the parties after full hearing, in other words, the matter must be finally decided between the

parties."" It is clear that the bar of constructive res judicata cannot apply.

62. From the aforesaid case-law, what we would deduce the principles as follows: A plaintiff (writ petitioner) is not permitted to split up his cause

of action. A transaction may give rise to more than one cause of action. Cause of action, in turn, means the bundle of facts, which, if traversed by

the defendants / respondents, must be proved / established before relief be available to the party. It has got nothing to do with the defence taken

and it is also not to be confused with the actual relief, which is sought. Equally, a right may be antecedent to the cause of action. The right may flow

from a transaction. It may flow from a document. It may, indeed, arise under a statute or, for that matter, a Government Order in appropriate

cases. In other words, an enforceable Government Order could give rise to rights. The cause of action in regard to a Government Order would be

the bundle of facts, which may establish infringement of the Government Order or even apprehension of infringement of the same by any overt act

or deliberate omission to implement the same. It may also arise in situations, where action is taken, which has the effect of extinguishing any rights

under the Government Order. The law does not require the joinder of different causes of action in one proceeding, though, under Order II Rule 3,

the principle is recognized, no doubt, subject to the mandate of Order II Rule 4, which relates to suits for recovery of possession of immovable

property that there may be joinder of causes of action. This is all subject to the court ordering that separate suits be maintained, which is based on

the principle of mis-joinder of cause of action. But, as far as the principle of Order II Rule 2 is concerned, it deals with omitting to sue on a claim,

which is part of a single cause of action. Equally, Sub-Rule (3) of Rule 2 Order II deals with a situation, where there are a number of reliefs open

to a party, all arising from the same cause of action and he omits to sue without the leave of the court in respect of any of those reliefs; he would be

precluded from seeking the said relief. Common to both Order II Rule 2 and Order II Rule 3 is the further fundamental principle that this bar to

seeking to include a claim, which is part of the original cause of action or the cause of action in the first proceeding or to claim a relief, which arose

from the cause of action in the first proceeding, is that the second proceeding must also relate to the same cause of action, which was the subject

matter of the earlier proceedings. In other words, without there being identity in the cause of action between the two proceedings, the bar under

Order II Rule 2 would not be attracted.

63. It is, therefore, necessary for us to ascertain whether there was a one cause of action or whether there was joinder of causes of action.

Secondly, whether there is identity between the cause of action / causes of action in the first proceeding and the cause of action in the second

proceeding. As far as the cause of action in the first proceeding is concerned, undoubtedly, the case of the appellants was that they had right to

freehold the nazul land in terms of order dated 02.12.2011. They complained that it was not being enforced. Apart from it not being enforced, the

matters came to a situation, where the rights were jeopardized by the issuance of the Notification under Section 4, which was again further

compounded by the issuance of the Notice under Section 17(4) invoking the urgency clause leading to even the dispensation with the right of

hearing under Section 5-A. It is in this context that the matter was argued. The cause of action in the present case, on the other hand, appears to

be equally that they have a right to have the lands made freehold and the order dated 07.08.2013 was, however, passed by which the lands,

instead of being made freehold, have been vested with the Government. Can it be said that there is identity of the facts constituting the cause of

action? Are the reliefs same?

64. If there is substantial identity and if the material to establish the case is the same, it would be a safe guide for us to hold that the cause of action

is the same. In this case, in the earlier case, there was no challenge to the order dated 07.08.2013. The matter becomes further complicated by

another development. The delayed admission by the appellants through their counsel that in March / April, 2014, counter affidavits were indeed

filed by the State and by the MDDA producing the order dated 07.08.2013; yet, the case came to be disposed of on consent as already noticed.

Did the production of the order dated 07.08.2013 leading to the alleged infringement of their right to have the property made freehold cast a duty

on the part of the appellants to amend their writ petition or, at least, reserve the right to challenge the said order or will not the fact that the present

case is laid seeking to challenge order dated 07.08.2013 and, in that context, seeking the relief, which was also sought in the earlier round, make it

a different cause of action?

65. We would think that, while it is true that there is a prayer, which is common in both the proceedings, though the relief may be the same, the

principle of Order II Rule 2 would not stand in the way of the appellants. This is for the reason that the fundamental postulate for applying Order II

Rule 2 or the principle thereunder is that the cause of action in the former proceeding must be the same as the cause of action in the subsequent

proceeding. The cause of action in the present case is apparently different, as the facts in the earlier case were issuance of the Notification under

the Land Acquisition Act, when the appellants were allegedly entitled to the enforcement of rights under order dated 02.12.2011. The Notification

under Section 4 was issued purporting to acquire the lands (in cases where they were freehold and the structures, which were put up on the nazul

lands). If order dated 02.12.2011 had been implemented, according to the appellants, the result would have been that the nazul land of the

appellants would have been made freehold. The present proceeding is based on the development, which took place on 07.08.2013, namely, the

vesting of the land with the Government under Clause 10 of the Nazul Policy of 2009, the result of which would be extinguishing their right to make

those lands freehold. In such circumstances, we would think that it may not be legal for us to hold that the plea is barred by Order II Rule 2.

66. The issue will be further, however, whether having consented to the disposal of the earlier writ petitions, namely, Writ Petition (M/S) Nos. 694

of 2014 and 2929 of 2014 in the manner set out and without there being anything in the judgment regarding enforcement of the order dated

02.12.2011, it could be said that there was abandonment of that claim so much so that the appellants would stand precluded from pursuing the

present writ petition. In this regard, the case of the appellants is that there is no such abandonment and there was no intention to abandon. While it

is true that the relief sought in the writ petition for quashing Section 4 Notification was not granted either in the original consent order or in the

appeal filed against the judgment in the review, the fact remains that the parties intended that all contentions available to them could be taken by

them in the hearing to be afforded to them under Section 5-A of the Land Acquisition Act. It is pointed out that it must be understood that the

appellants never intended to intentionally give up the relief relating to enforcement of the order dated 02.12.2011.

67. Learned counsel for the respondent MDDA, on the other hand, would point out that, having regard to the scope of hearing under Section 5-A,

enforcement of the order dated 02.12.2011 could hardly be embraced within its four walls.

68. In order that there be abandonment within the meaning of Order 23, the wholesome principle based on considerations of justice is that, when a

person has voluntarily and intentionally decided not to follow a particular claim, which he has set up, available in the writ proceedings also, there

must be an intentional giving up of the claim. For instance, when a party submits that a particular claim or relief is not pressed, it would certainly

indicate his intentions to give up the claim. In this case, we are asked to come to the same conclusion by the conduct of the appellants in not

seeking either to reserve the liberty to approach the court again seeking the said relief or, in some way, indicating that they did not give up the said

claim. It is to be noted that a review was filed by the appellants. In the review also, they did not seek to have the matter reopened with reference to

the relief for enforcement of the order dated 02.12.2011. Instead, they were focused on getting the Notification under Section 4 quashed. They

succeeded in doing so before the learned Single Judge. Conspicuous by its absence is any attempt to seek any relief in respect of the order dated

02.12.2011. The conduct of the appellants is no different in the appeals. The appellate judgment also is silent in regard to the relief relating to the

order dated 02.12.2011.

69. In this connection, we have also to consider the question as to whether there were two different causes of action in the same proceeding or it is

a case of different relief sought under one single cause of action. It is, undoubtedly, true that the order dated 02.12.2011 is claimed by the

appellants as a Cabinet decision, which creates certain rights in favour of the appellants and does not, by itself, constitute the cause of action. A

cause of action would, indeed, require some act or omission on the part of the respondent, which affects the right of the petitioner resulting in the

party approaching the court seeking appropriate relief. The legal right would be the foundation for the cause of action. It would constitute part of

the cause of action. There was apparently an omission on the part of the respondents to freehold the properties and this was the complaint of the

appellants in the earlier writ petition. The omission on the part of the respondents despite the terms of the order, according to the appellants,

indeed, constituted a cause of action. Even assuming for a moment that the actual cause of action was the issuance of the Notifications under

Sections 4 and 17 of the Land Acquisition Act, whereby the right under the Government Order dated 02.12.2011 was infringed or affected, this

would be a case, where, from one cause of action, there were different reliefs available and in Writ Petition (M/S) No. 694 of 2014, the petitioners

therein sought the full reliefs available; whereas, in Writ Petition (M/S) No. 2929 of 2014, the relief of enforcement of the order dated 02.12.2011

was not sought. We have already held that the plea of res judicata or constructive res judicata may not be available having regard to the absence of

the decision of the court. Even the bar under Order 23 or, rather, principle of Order 23 may not apply unless the cause of action is the same. The

direct authority for this is the judgment of the Apex Court in Vallabh Das vs. Dr. Madan Lal and others, reported in (1970) 1 SCC 761, whereby

the court held that the expression ""subject matter"" in Order 23 Rule 1 though is not defined, but that expression includes the cause of action and the

relief claimed. The court, further, took the view that unless the cause of action and the relief claimed in the second suit is the same as in the first suit,

it cannot be said that the subject matter of the second suit is the same as that in the present suit. The court, further, held that mere identity of some

of the issues in two suits do not bring about an identity of subject matter in the two suits and, finally, the court held that the subject matter means

the bundle of facts, which have to be proved in order to entitle the plaintiff to the relief claimed by him. If this principle is employed, it will be noted

that, while it is true that there were identity of some issues in the earlier writ petition, namely, Writ Petition (M/S) No. 694 of 2014, but the cause

of action meaning the bundle of facts to be established in both the proceedings appear to be different. Therefore, there is no scope for applying the

bar of abandonment even if there is such bar by the conduct of the petitioners. Case of the respondent that the application of the predecessor-

ininterest of appellant Nos. 1 to 4, as also the application of appellant No. 8, has already been rejected:

70. Along with the counter affidavit filed, CA3 is annexed, which consists of notice dated 11.07.2007 addressed to the predecessor-in-interest of

appellant Nos. 1 to 4 calling for certain documents. They have also annexed the order rejecting the application of the predecessor-in-interest.

There is a definite case for the respondents that the predecessor-in-interest passed away after a period of nearly two years of the order rejecting

the application, which was dispatched at the address by registered post. There is also material to show that communication dated 11.07.2007 was

indeed received. Though appellant Nos. 1 to 4 would disclaim receipt of the order dated 09.08.2007 rejecting the application, we would think it

more probable that it was indeed received. At any rate, this is also produced along with the counter affidavit. The rejection has not been challenged

either by the predecessor-in-interest or by the appellants themselves. The result is that it mounts an insurmountable obstacle in the path of even

considering the grant of relief as far as appellant Nos. 1 to 4 are concerned. If the application for making the lands freehold is rejected in the year

2007, then there would obviously be no reason to even consider the question of implementation of order dated 02.12.2011 as claimed by them.

This is because, without setting aside the said order, there cannot be a question of grant of freehold rights, which application has already been

rejected. If we proceed on the said basis that the application stood rejected, then equally, there would be no basis at all for the appellants to seek

to challenge the order dated 07.08.2013, as they would cease to possess the standing to challenge the order. Though the appellants would

contend that a fresh application would be maintainable as the rejection has been on the ground of non-production of documents, we are of the

view that there is a rejection and, without challenging the rejection and without even having made an application, it is inconceivable as to how the

appellant Nos. 1 to 4 could possibly maintain the writ petition seeking the reliefs as sought. Consequently, on this short ground, appellant Nos. 1 to

4 must fail.

71. Equally, in regard to appellant No. 8, additional affidavit dated 06.09.2016 (see page 520 of appeal paper-book) has been filed pointing out

that the application of appellant No. 8 has been rejected. In the said additional affidavit, the respondents have produced a copy of the application

for freehold, a copy of the letter dated 12.07.2007, which has been stated to have been received, and the rejection order dated 09.08.2007, along

with a copy of the dispatch register and postal receipt.

72. In answer to the same, in the objections, appellant No. 8 admitted the receipt of letter dated 12.07.2007, which was delivered by hand and in

which certain documents were sought for. It is stated that the respondent took more than 8 years to send the letter, but allowed only one week. It

is their case that all the documents, which were to be submitted, had already been submitted way back in 1999. Appellant No. 8 states that he

does not recall having received such letter and, despite efforts to trace it, it could not be traced. An application under the Right to Information Act

was got to be made through his son to ascertain whether it had received. It is submitted that appellant No. 8 has not received any reply. It is further

stated that respondent No. 2 had sent two letters dated 15.03.2002 and 16.03.2002 seeking certain documents. Those documents were

submitted by appellant No. 8, which was duly acknowledged by respondent No. 2. There is reference to further correspondence by appellant No.

8. These last two documents are relied on, apparently, to contend that appellant No. 8 was all along under a bona fide belief that his application

was pending. He would also say that it is highly improbable that no action would have been taken by him if he had received the same. It is also

stated that the rejection is on purely technical grounds and will not bar fresh application. Appellant No. 8 has referred the Circulars of 2011, 2013

and 2016 to show that freehold conversion policy is still in force and he is entitled to apply afresh. The difference would only be the amount of

conversion charges.

73. In regard to appellant No. 8 also, we would think that we see no reason to not proceed on the basis that his application stood rejected. It has

been communicated as the official acts must be treated to have been performed as per law. The dispatch register is also produced. The fact that

appellant No. 8 is unable to trace it does not mean that he did not receive it. Furthermore, though the rejection order has been produced, no

attempt has been made to impugn the same. The rejection is of the year 2007. Since the rejection order has not been challenged, we apply the

same reasoning as we have applied to appellant Nos. 1 to 4 and hold that, on this sole ground, the writ petition and the appeal filed by appellant

No. 8 must necessarily fail. What is the true effect of the order dated 02.12.2011 and whether the order dated 07.08.2013 is bad on the ground

of violation of principles of natural justice or otherwise?

74. The sheet anchor of the appellants'' case is the said order. In fact, the relief itself is to enforce the said order. According to the appellants,

under the said order, the appellants and other similarly situated were entitled to have all their Nazul lands made freehold. The order was not

confined to the properties, which were directly affected by the demolition only. On the other hand, the contention of the respondent is that Clause

7 of the order dated 02.12.2011 was actually intended only for the purpose of carrying out the rehabilitation policy and it is for that purpose that

freehold was contemplated. In other words, freehold was not contemplated for the benefit of the other lands, which were government lands and

which were needed for the purpose of redevelopment. Equally, according to Sri Garg, Clause 9 was intended for only enlarging the time for

making the application to be made freehold and it would not cover any application at the instance of those Nazul holders, whose Nazul leases itself

had expired.

75. A perusal of the said order would reveal the following things:

(1) It was decided to construct a 24 metre wide four lane road from the statue of Ambedkar Ji located at Ghantaghar upto Prabhat Cinema and

from Digvijaya Cinema to Krishna Cinema.

(2) It is decided to rehabilitate the persons affected by the construction. Towards the same, a commercial building / complex in the Public Works

Inspection House Premises and RFC Godown Premises in Ghantaghar, Dehradun were to be constructed. So also, residential houses on the land

belonging to the Authority situated in I.S.B.T. premises were to be constructed by the State Government.

(3) Thereafter, the decision purports to provide for rehabilitation of the displaced resulting from the widening of Chakrata Road. The decisions

were specifically set out and they, inter alia, included the following steps:

(i) Those affected by the widening of Chakrata Road were to be allotted an area equal to the affected area.

(ii) There is reference to properties, where landlords and tenants are occupants; they were to be rehabilitated in the same position.

(iii) Then the order purported to deal with the building owners being allotted house/shops at new places.

(iv) The tenants would be allotted on the basis of the cost of construction on no profit no loss basis.

(v) The allottees were granted also exemption from expenses towards Registration, Stamp purchase and other legal expenses.

76. Then comes the controversial Clause 7. On a proper appreciation of Clause 7, the following, in our understanding, is the true scope of the said

clause having regard to the context in which the clause is found. It deals with the allotment of shops / house at the new place. Therefore, it is

directly relatable to Clause 2, which provides for rehabilitation in the commercial building complex or in the residential house. It also must be

related to Clause 1, which provides that those affected by the widening of the Chakrata road will be allotted an area equal to affected area. All

these clauses, if read together, then the conclusion is that Clause 7 is also a part of the entire scheme and it deals with, however, the category of

persons, who were Nazul holders. Thus, those Nazul Holders, who were to be allotted an equivalent area at Chakrata road by way of shops /

house, in regard to them, it was contemplated that those, who have deposited 25% amount on self-evaluation basis for conversion of the land into

freehold, the allotment by way of rehabilitation was to be done after getting the balance amount deposited from them on the basis of the previous

circle rate or the circle rate prevalent in the year 2000 and after conversion into freehold. Therefore, on a perusal of Clauses 2, 3(1) and 3(7), we

would think that we can conclude that, in respect of Nazul holders, who have deposited 25 per cent, they were also entitled to allotment at the new

place provided they deposit the balance amount at the previous circle rate or the circle rate of the year 2000 and after conversion into freehold.

Clause 3(7) cannot be understood as a promise to make the land freehold. On the other hand, it is a condition, which is imposed on Nazul holders,

who wish to have allotment of the shop / house to them at the new place. The order appears to cover landlords and tenants and also Nazul

holders. All of them are given entitlement to allotment to the newly constructed buildings, which is equal to the affected area. Therefore, they are all

to be treated in the said sense equally.

77. However, the argument of the learned counsel for the appellants is that this Clause may also be read in conjunction with Clause 3(11). Clause

3(11) reads as follows:

(11) Owners of property to be demolished as a consequence of Road widening would be granted the following concessions in the Building Bye

Laws by the Authority in sanction of building map in regard to remaining portion of building/land -

(i) minimum size of commercial plot of 15.00 sq.mt. as against 125.00 sq.mt. and the minimum size of residential plot of 40 sq.mt. as against 60

sq.mt. be permitted.

(ii) FAR of 2.00 as against 1.40 be permitted.

(iii) The height of building / house upto 12 mtr. As against 9.00 mtr. And maximum three storey be permitted.

(iv) Ground Coverage of 85% as against 65% be permitted.

(v) Full exemption be permitted from providing parking spaces.

(vi) Front set Back of 2.00 mtr. as against 4.50 mtr. be allowed. Side and rear set back will not be required to be maintained.

78. In appeal, it is further contended that the Court may bear in mind that, under the extant Nazul Policy, there cannot be partial freehold. In other

words, freehold is granted in respect of the whole of the Nazul property. It is submitted that, even though the writ petition was to enforce the order

dated 02.12.2011 and there is also a prayer sought in the appeal to enforce the Nazul Policy, the Court may appreciate that the right to freehold

originally emanated in the Nazul Policy itself and, therefore, the order dated 02.12.2011 cannot be read in isolation and, reading the order dated

02.12.2011 along with the Nazul Policy, the notices issued to the appellants to deposit the balance amount only with reference to the affected area

and not in respect of the entire area were not in accordance with the law.

79. Coming to Clause 3(11), it provides that the owners of the property to be demolished as a consequence of road widening would be granted

certain concessions in the building bye laws for sanctioning of building map in regard to the remaining portion of the building / land. In this regard,

there is a case for Mr. Vinay Garg, learned counsel for the MDDA, that this Clause is actually meant for the owners of the property and that the

Nazul holders would not be covered by the said Clause. Per contra, the contention of the appellants is that this may not be a reasonable way of

interpreting the Clause. This is for the reason that, if a Nazul holder had a building and it is sliced by virtue of the widening and acquisition, the

sliced up building could not be used for getting the building map sanctioned with reference to the balance land available and this would be

completely unreasonable and impracticable way of looking at it and this was not contemplated. In other words, it is his contention that the benefit

of this Clause cannot be denied to the buildings of the Nazul holders, which had been sliced up / demolished. They would be entitled to put to use

their properties.

80. The contention was raised by Sri Vinay Garg, learned counsel for the MDDA that the Clause is not meant for Nazul Holders as the words

used are ""Building Owners"". The expression ""Building Owners"", it is pointed out, is different from Nazul Holders. In fact, the case of Sri Garg is

that none of the petitioners are Nazul Holders. They have not been able to establish their case as such.

81. Sri Vishal Gupta, learned counsel for the appellant would point out that grave injustice would result from the interpretation placed by the

respondents. He would point out that when the building belonging to a Nazul Holder has been sliced, unless Clause 3(11) applies to Nazul Holders

also, it would result in a situation, where they will be unable to do anything with the building. He would also submit that there is no discrimination in

favour of the Nazul Holders by taking the said contention. Clause 3(1), no doubt, provides for an alternative location to owners, tenants in an

equivalent extent. This is for the reason that the right of conversion into freehold is not a new right. The rights available to the Nazul Holders under

the Policy of the Government, a consensus was arrived at for the properties being demolished and reconstructed. Had this not been provided, no

Nazul Holders would have consented for the demolition and the Government had also to take cumbersome procedure for acquisition of land under

the Acquisition Act. In Sub Clause (11), it is contended that the Nazul Holder will be left with the portion after demolition and without facility for

reconstruction or redevelopment of the same. It is the case of the learned counsel for the appellants that the respondent does not sanction building

plan on the Nazul Land. The resultant position would be that the appellants will not be able to reconstruct or redevelop the same, unless the Nazul

land is converted into freehold. This would mean that the demolition will remain in the state of demolition. Therefore, the proper interpretation

should be that entire land is to be converted into the freehold as per Clauses 7 & 9 and, thereafter, the owners will be entitled to the concessions

under the building byelaws under Sub-clause (11). An alternative argument is also raised that in any case any Nazul Holders are the owners of the

building, they are entitled to the concessions of the byelaws. The Government has admitted that the Nazul Holders are the owners of the building as

per the Notification under Section 4 of the Land Acquisition Act and provided for acquisition of only structure or building standing on the Nazul

land. Therefore, if the concessions of the building byelaws under Sub Clause (11) are to apply to the Nazul Land Holders, then, necessarily Nazul

Land is to be made also freehold under Sub-clauses (7) and (9). Building plan cannot be considered and / or sanctioned. It is also contended by

the learned counsel for the appellants that the stand of the respondent no. 2 that the G.O. dated 02.12.2011 only relates to the property, on which

part of the structure has been demolished and does not relate to the remaining portion, and that the impugned order dated 07.08.2013 passed by

the District Magistrate only relates to the remaining Nazul land after demolition and, therefore, the Government Orders and the Orders of the

Magistrate operate in different areas is not correct. This contention cannot be sustained as if the building standing on land is partially demolished, it

cannot be said that the remaining portion of the building remains unaffected. There is also reliance placed on correct interpretation of Clause 3(11)

in this context. Therefore, it is also contended that the G.O. dated 02.12.2011 would also cover the remaining portion of the land / building after

demolition.

82. It is clear that there was a settlement between the authorities and the persons having properties. What is in dispute is the exact scope of the

settlement. There are two views possible. The first view is as follows:

83. Clause 3(7) of the order refers to Nazul holders, who had applied for making their lands freehold and have deposited 25% and their building

was demolished. They were given right to be allotted an equivalent area in the building constructed, as referred to in Clause 3(1). This was subject

to the condition that they must deposit the balance amount as per the rates mentioned in Clause 3(7). There was no promise to freehold the land in

excess of the equivalent area.

84. Clause 3(11) was not applicable to the Nazul holders / lessees. It was meant to apply only to those whose buildings, which were demolished

partly, stood on the land, which was already made freehold. Several concessions are given to them for sanction of building map in regard to the

remaining portion of the building / land. The other view is as follows:

85. Clause 3(11) provides for benefits to the owners of the properties to be demolished. The concessions are given to them for sanction of building

map. The map is in regard to the remaining portion of the building or land. These concessions apply for sanctioning building map for the remaining

portion of the building. It also applies for sanctioning of building map for the remaining portion of the land. This means that, if the owner of the

building, which remains after the partial demolition, seeks a building map to carry out work qua the building, then the concessions will apply. It also

means that, if the sanction of map is sought to put up a building in the land remaining with the person, then also the concessions will apply.

86. What is then the meaning of the expression ""owners of the property demolished? Can it bear two interpretations? Firstly, is it intended to refer

to the owner of the land or a person with freehold rights in land on which the building stood, which was partially demolished? The expression found

in Clause 3(4) is building owner. This meaning is pressed upon us by Sri Vinay Garg.

87. The other interpretation is the owner of the property demolished means the owner of the building as only a building could be demolished and

not land.

88. If the view is accepted that the owner of the property demolished includes Nazul holders, then we are confronted by the absence of any further

requirement in clause 3(11) to make such land, i.e. Nazul land on which the building stood, freehold. The case of the appellants is that map will not

be sanctioned unless the land is freehold. If that is so, how were the nazul holders able to put up their buildings? If this view is accepted, namely,

Clause 3(11) includes buildings of nazul holders, then can we not interpret Clause 3(7) as meaning that freeholding is to be done for the whole land

and not merely the equivalent area? Will this not be in accord with the nazul policy, which does not permit partial free holding? If there is

freeholding qua the whole land, then the concessions in Clause 3(7) and clause 3(11) become available to the nazul holders; otherwise, nazul

holders get the benefit of Clause 3(7) and not Clause 3(11). What will happen to the remaining buildings of Nazul holders? Will there not be a

charge of discriminatory treatment? It may be noticed also that the tenants are also given certain rights. But, under Clause 3(11), there is only

reference to owners and tenants are clearly excluded. This is clearly explainable as tenants would not have the right to put up any further

construction in the building ordinarily. If the settlement was for freeholding the entire land, then could the District Magistrate ignore it and vest the

land under Clause 3(10) of the Nazul Policy, 2009? Is there a case of promise based on Clause 3(11)?

89. In this regard, we must notice, however, that neither in the writ petition nor even in the appeal memorandum as such, there is any reference to

Clause 3(11). There is no case for the appellants that they are entitled to the benefits of Clause 3(11). There is no case of settlement, which

included the benefits of Clause 3(11) qua the Nazul holders. They do not have a case that they agreed for demolition of their building on the

understanding that they will be given the benefits mentioned in Clause 3(11). If that is so, the case that is now sought to be set up before us is

bereft of any foundation in the pleadings in the writ petition. There is no case of any promise that they acted on the basis of Clause 3(11) and

agreed for the demolition and, but for not getting their benefit under Clause 3(11), they would not have agreed for the demolition. Therefore, the

case of Clause 3(11) appears to be set up by way of implication. We would, therefore, think that the appellants cannot lay a claim for freeholding

of the entire land by setting up a case under Clause 3(11) read with Clause 3(7).

90. Then, there is a further question relating to interpretation of Clause 3(9). According to Mr. Vinay Garg, the only purpose of the said Clause,

which we have extracted, is that the Nazul lessees, who have not applied for freehold rights within the previously fixed time limit, were to be

granted the facility of freehold in terms of order dated 29.11.2011. The order dated 29.11.2011, which has been translated and produced before

us, reads as follows:

No. 761/V-2011-01(N.L)/2008 T.C

From, P.C. Sharma Principal Secretary, Govt. of Uttarakhand. To, 1. All Regional Commissioners, Uttarakhand. 2. All District Magistrates,

Uttarakhand. 3. Vice Chairman of All Development Authorities. 4. Chairman of All Special Arae Development Authorities, Uttarakhand. Housing

Section - 1 Dehradun: Dated: 29th November, 2011 Subject: Amendment in the Prevalent Nazul Policy with respect to Management and Disposal

of Nazul Land.

Sir,

This is to attract your attention on the aforesaid subject and bring to your notice that the Nazul Land is the property of the State Government and

for the Management and Disposal as well as for freehold of the Nazul Land the Nazul Policy, 2009 has been issued vide Government Order No.

437/v-Aa.-2009- 01(N.L)/08 dated 01-03-2009 and the time limit of the same has been extended till date 31-3-2012 vide Government Order

No. 151/V-Aa.-2009-01(N.L)/08 dated 06-04-2011. In this connection the Government after due consideration has taken a decision on which I

have been directed to state that based on Clause 3(3)(Cha) of Nazul Policy issued vide Government Order No. 437/v-Aa.-2009-01(N.L)/08

dated 01-03-2009, all those who have not got the Freehold of Nazul Land done they can apply for freehold till date 31-03-2012 based on the

prevalent circle rate of land as on 09-11-2010 and further those who have deposited the partial amount in past they can get their land freehold

based on the prevalent circle rate of land as on 09- 11-2010 and they will have to deposit the remaining amount leaving the amount already

deposited.

2. Subject to the aforesaid relaxation for all proceedings of freehold, all the provisions of NazulS Policy 2009 shall be applicable.

3. This Order will come into force with immediate effect. The afore referred directions issued towards management and disposal of Nazul Land

should be complied strictly.

4. This Order is being issued with the consent received from the Finance Department vide its Non Official Letter No. 697/XXVII(2)/2011 dated

28.11.2011. Yours Faithfully,

(P.C. Sharma)

Principal Secretary.

91. Therefore, it was submitted that it only enabled those persons, who had valid nazul leases, to apply for freehold till 31.03.2012. In other

words, this Clause would not enable a person, whose lease had run out, to get the benefit of Clause 3(9). Per contra, the case of the appellants is

that, in fact, the Nazul Policy of 2009 (Clause (i)) provides for facility of freehold of lease hold land for those whose lease had expired. Clause (j)

provides for freehold rights to unauthorized occupants also. Even persons, who had purchased the land on mutual understanding, power of

attorney or registered agreement to sell, is sufficient to treat them as unauthorized occupants and to claim benefit of purchase. Purchasers of

leasehold right through registered sale deeds are entitled to purchase. It is further contended that, actually, the time limit for applying for purchase

of the freehold indicated in the order dated 29.11.2011 itself has been extended from time to time and it continued to exist. Therefore, the learned

counsel would submit that this Clause cannot be pressed into service by the respondents. Per contra, Mr. Vinay Garg would submit that what the

writ petitioners had approached this Court is to enforce the order dated 02.12.2011. If that is so, they can only claim benefits, which are provided

in the said order. The said order, in Clause 3(9), granted the facility to those persons, who were Nazul lessees and whose time limit for applying

had expired and they were given the benefit of Government Order dated 29.11.2011. This is besides pointing out that there is nothing to indicate

that the writ petitioners were Nazul lessees.

92. We see some merit in the contention of the respondent in regard to Clause 3(9) being referred to Nazul lessees. Clause 3(9) should be read in

conjunction with Clause 3(7). There is reference to nazul holders. They were to be given the benefit of allotment of shop / house by way of

rehabilitation on payment of the balance amount and getting the property made freehold. Obviously, the persons covered by Clause 3(7) are those

nazul holders, who had already made the application and deposited 25 per cent on self-evaluation. As far as persons covered by Clause 3(9) are

concerned, they appear to be nazul lessees. Would the reference to nazul lessees be broad enough to take unauthorized occupants, meaning,

persons whose leases had run out or purchasers from such persons? We would think, strictly speaking, Clause 3(9) was intended to confer benefit

only on nazul lessees. In other words, they would also get the benefit of rehabilitation. Those nazul lessees, who had not applied, were given time

for applying, as provided in order dated 29.11.2011 and, thereupon, they were also assured the benefit of allotment of shop / house as provided

therein. Any other interpretation would make Clause 3(9) superfluous and repetitive; otherwise, under the Nazul Policy, the rights, which were

already there, are rights which are apparently not taken away.

93. There is no dispute that the time limit has been subsequently extended under various orders; but a person covered by Clause 3(9) cannot get a

higher right than the person covered by Clause 3(7). Therefore, both persons can only aspire for getting the benefit of equivalent area and,

therefore, only the right to get freehold the land in relation to the equivalent area. All this is subject to establishing the right as provided therein.

94. Quite clearly, the clause 3(7) does not contain a promise as such to the Nazul Holders that the entire land will be made freehold. In fact, it is to

be understood as a liability on the part of the Nazul Holders, whose property was affected and who were to be rehabilitated as provided therein

that for being allotted the building in an equal extent, they would have to, if they have already applied for freehold of the land after depositing 25%,

make the land freehold by paying the balance amount as provided therein. Apparently, the right, which they would get over the newly allotted

property would be absolute right. Therefore, what is contemplated was that they would have to also perfect their right in the sense that their tenure

becomes freehold.

95. The notices, which have been issued to them, also proceed on the understanding that they were called upon to pay the amount in terms of only

what is the extent of land, which was affected. It appears that they have not complied with the same. There are, however, a few issues to be dealt

with in this context. The problems, which are projected by the learned counsel for the appellant are: (1) The Nazul Policy of 2009 does not permit

creation of freehold right partially. In other words, if there is a land, which is Nazul and if the Nazul Holders apply for making the land freehold,

then under the Nazul Policy of 2009, he would have to apply for freehold right in respect of the whole land. The said condition was not modified

by the Government Order dated 02.12.2011. Therefore, the appellants had a right to make the entire land freehold. The amount of 25 percent

already paid in certain cases will be more than 100 percent for freeholding part of the land, on which the buildings have been demolished. There

will have nothing balance to be paid. The policy does not contemplate power of refund of excess amount. (2) It is contended that there will be

anomaly, if the respondents" contentions are accepted. Clause 7 deals with Nazul Holders, who deposited 25 per cent. If the arguments of the

respondents are accepted, then they will be entitled to freehold rights in respect of part of the whole land. The Nazul Holders have calculated 25

percent on the basis that they would get freehold for the whole land. If, however, freehold is to be made available only for the part of the land, then

the issue would arise as to how the amount paid is to be adjusted. There are cases, where the amount as already paid by 25 per cent suffices or is

in excess of the amount, which is to be paid in respect of lesser extent.

96. The order dated 07.08.2013 is impugned being ultra vires Articles 14 and 21 of the Constitution of India. It is also the case of the appellants

that actually even this Court has left open the right to the parties to challenge any proceeding and, therefore, that would include the right to

challenge the order dated 07.08.2013. There is also a case that respondent no. 3 / District Magistrate could not have passed the order as there is

no provision in the master plan and he has no power to vest the land in the State. There is no power not to convert. Act of vesting betrays the total

non application of mind by the District Magistrate. Distinction between ""public use"" and ""pubic purpose"" is stressed as the words ''public purpose''

were wide and may include public use; whereas pubic use, which is the word used in the Nazul Policy relied on by the District Magistrate was a

restricted term. The order has taken away the right to livelihood without due process and is, therefore, violative of Article 21.

97. The order of the Magistrate is also faulted on the ground that the Magistrate has no right to overrule the Government Order dated 02.12.2011,

which is a cabinet decision. The contention of the respondent that 07.08.2013 is also a cabinet decision is challenged as erroneous on the ground

that Clause 10 of the Nazul Policy only empowers the Magistrate to take certain steps regarding Nazul land, on which, the proposal was received

by the MDDA and not to overrule any other cabinet decision. Non application of mind is attributed to the District Magistrate as he has vested the

Nazul Land much more than what was available after the Nazul Land was taken away for road widening. Not taking G.O. dated 02.12.2011 into

consideration is pressed as another circumstance showing non application of mind. The redevelopment plan has not been approved by the State

Government. The State Government has given only in principle approval. The Magistrate did not consider this aspect. Reference by the Magistrate

to the orders dated 27.5.2013 and 09.07.2013 passed in the public interest litigation, being Writ Petition (PIL) No. 87 of 2012 of this Court, by

which this Court has directed the Magistrate to pass order, shows again non application of mind. There was no direction to vest Nazul land in the

State by this Court. It is further contended that the proposed amended redevelopment plan submitted by the MDDA to the Government on

17.11.2014 shows that equivalent area is proposed to be given to Nazul Holders provided the Nazul Land Holders pay conversion charges

towards freehold and deposit the compensation received under the Land Acquisition Act. It is the case of the appellants that respondent no. 2 got

the Nazul land first vested in the State Government and now it has proposed that after payment of conversion charges, the entire compensation

received under the land acquisition proceedings is also to be deposited by Nazul Land Holders. This shows design to deprive the certain land

owners of the legitimate compensation received under the land acquisition proceedings. The grounds like expiry of lease deeds, rejection of

application of appellant nos. 1 to 4 and appellant no. 8 in the year 2007, not furnishing the requisite documents with their application for freehold

etc. canvassed by the second respondent to justify the order is alleged to be against the decision of the Hon''ble Apex Court in (1978) 1 SCC

405. That apart, it is contended that the grounds are even otherwise unsustainable. Non furnishing of documents, expiry of lease cannot be a

ground for denial for conversion, it is contended. It is contended that under Clause 4(a) of the Nazul Policy of 2009, lease holders or legal

successors and legal purchasers are entitled to apply for freehold rights. Likewise, there is reference to Sub-clause (g), which provides rights for

unauthorized occupants, Sub-clause (i) which provides facility for freehold of the lease hold land, whose lease has expired. It is contended that the

Policy permits freehold in favour of the unauthorized occupants; they could not possibly provide documents regarding their occupation. 98. In this

regard, first we must notice the availability of the principles of natural justice qua appellant nos. 1 to 4 and appellant no. 8. We have to proceed on

the basis that the applications made on their behalf have been rejected. The rejection is not challenged. The rejection is apparently on the basis that

no documents were made available, which means that they were not able to establish their right. This means that they cannot be found entitled to

freehold the land. If they are not entitled to freehold the land, then there can be no subsisting right to enforce the Government Order dated

02.12.2011 insofar as it relates to the issue of freeholding the lands. Apparently, rejection has been done in terms of the Nazul Policy of 2009,

which the appellants themselves would lay store by. It is noted that the appellants'' case is that the Government Order dated 02.12.2011 must be

read in conjunction with the Nazul Policy. Therefore, purporting to act under the terms of the Nazul Policy, the applications have been rejected.

This means that they cannot be permitted to get the benefit of freeholding their lands or implementation of the Government Order dated

02.12.2011. If that is so, would they have any subsisting right so as to question the order dated 07.08.2013 issued by the District Magistrate. We

would think that as far as appellant nos. 1 to 4 and appellant no. 8 are concerned, their applications for freeholding being rejected and not being

challenged by them, it may not be open to them to challenge the order dated 07.08.2013. If their applications were not pending consideration as

on 07.08.2013 when the District Magistrate purported to pass the order, even if it is by way of vesting the lands, but it must be understood as an

exercise of power under Clause 7(10) of the Nazul Policy, which means setting up a part of the land for public use, can appellant nos. 1 to 4 and

appellant no. 8 contend that the Magistrate should have heard them. We are of the clear view that when their applications have been rejected,

there was nothing on the basis of which, they could have staked the claim to be heard as such. We must, in this connection, bear in mind the case

of the respondents that the lands, which were the subject matter of the order dated 07.08.2013 are not the lands, on which the sliced up building

stood. Therefore, their rights, in this regard, would not suffer as such. Therefore, appellant nos. 1 to 4 and appellant no. 8 cannot lay store by the

principles of natural justice in the facts. No doubt, appellant nos. 1 to 4 and 8 have a case that the rejection cannot bar a fresh application and,

therefore, they have a right to challenge the order dated 07.08.2013 as if the said order is allowed to stand, it would be a permanent bar against

their filing a fresh application. We do not see, why we should permit appellant nos. 1 to 4 and 8 to proceed on the basis that even then their

applications have been rejected apparently on the basis that no documents could be produced and they are not challenged and to permit to

challenge the order dated 07.08.2013. We do not think that we should also exercise our discretion as such in favour of the appellants in this

regard. The Nazul Policy prohibits partial freeholding:

99. We are concerned mainly with the enforcement of Government Order dated 02.12.2011. It may be true that the relevant clause in Nazul

Policy prohibits partial freeholding, but, even according to the appellants, Government Order dated 02.12.2011 is a later Cabinet decision and

what the appellants sought in the writ petition is only the enforcement of the said Government Order. Even reading the Nazul Policy of 2009 along

with the Government Order dated 02.12.2011, if the stand of the authorities is that partial freeholding is being countenanced and appellants have

been issued with notices calling upon to pay the amount, then we need not be detained by the argument that freeholding is to be for the whole land.

In other words, there is no objection raised on behalf of the State Government that such a process is not permitted. Rather it stands by such a

process. Apparently, the clause prohibiting partial freeholding is not actually meant for the benefit of Nazul holders. If that be so, if the authorities

do not insist on complete freeholding and are agreeable for partial freeholding, then it may not be a matter of illegality to provide for partial

freeholding. The case set up that clause 3(7) contemplates cases where 25% was deposited by Nazul Holders:

100. The complaint is that, if this is accepted in some case, the amount of 25% itself will be in excess of the requirement and there is no provision

for refund.

101. This aspect will be taken care of by a direction that, if 25% already paid is sufficient to cover the freehold value, then nothing more need be

paid and, in fact, if any amount is found to be excess, that should be refunded. Validity of order dated 07.08.2013:

102. There is a case that it is violative of Articles 14 & 21. Article 21 protects against arbitrary and unfair action. It protects the right of livelihood.

Article 14 is a shield against unfair action; but, if the land is required for public use, the interest of the appellants should be subordinated to public

interest. The argument appears to be also vague and we reject the same.

103. There is a case that there is no approved development plan as such and there is only an approval granted in principle and there is no provision

in the master plan. We would think that the case set up by the appellants before the learned Single Judge was that there is no authority with the

District Magistrate to pass order dated 07.08.2013; but, there can be no denial that there is indeed power under the very same Nazul Policy,

which, from time to time, is invoked by the appellants themselves and which empowered the Magistrate to take action on the basis of request by

the MDDA. We have noticed the developments in this case. Apparently, the lands and the properties were needed for public use. There was

power under clause 10 of the Nazul Policy. The decision is to be apparently understood as one by which the lands were taken outside the purview

of the freehold scheme. The word ""vesting"" though, at first impression, does give an idea that it betrays non-application of mind, for lack of felicity

of expression, we cannot interfere as substantially it only means that the lands will not be made freehold. The District Magistrate has no power to

overrule the Cabinet decision dated 02.12.2011:

104. The District Magistrate has only exercised his power under clause 7(10) of the Nazul Policy. We have to bear in mind the stand of the

respondent authority that the power has been exercised by the District Magistrate in respect of lands, which are not covered by clause 3(7). If that

be so, and as we have already held that order dated 02.12.2011 does not contain a settlement that the entire lands are to be made freehold, we

cannot hold that the decision of the District Magistrate is contrary to order dated 02.12.2011. The same answer should apply in regard to the

argument that there is non-consideration of order dated 02.12.2011 by the District Magistrate.

105. We should also bear in mind that this is not a case, where there was no material or cause for the District Magistrate to act under clause 10.

We have already referred to the developments, which took place. There was a perceived public need or public use of the property of the

Government. If the competent authority felt that it was necessary, it cannot be a case, where it is arbitrary or a case where there is no material at

all.

106. At this juncture, we must deal with the arguments that public use, which is an expression used in Clause 7(10) is not as wide as public

purpose. We have no hesitation in rejecting that argument. The words used in place of purpose, in our view, cannot be any less wide than the word

''purpose''. We are not interpreting a statute. The words ''public use'' are found in a Government Order. Apparently, it is a reiteration of the words,

which were there in the earlier policy. The Dictionary Meaning of the word ''use'' includes to ''take, hold or deploy as a means of achieving

something''. Therefore, we would think that the words ''public use'' are in the context of the Nazul Policy and the background of the provision in

question. Even if it is the MDDA, which needs the land for public use, as MDDA itself is a public body, we cannot give the expression a narrow

interpretation. It is after all a Government land. Can any party claim an absolute right to contend that the Government should, first, give freehold

right and later on, even if the public need or public use genuinely extends, it should again acquire the same land after paying substantial amounts by

way of compensation or be compelled to negotiate with the parties and purchase back their lands. The time taken in acquisition proceeding is not

small. We would certainly think that such an interpretation on the Nazul Policy is certainly not warranted. Even proceeding on the basis that there is

no laches in the matter, we may also now take note of the conduct of the appellants in taking the false plea that they were not aware of the Order

dated 07.08.2013. It is not in dispute that their case that they were not aware of the order, they became aware of the order and the order was

obtained by them, as stated in the writ petition, is false. It is no doubt true that revelation was made by the appellants themselves. While we cannot

debar them from seeking enforcement of the order dated 02.12.2011 by virtue of the litigation, which took place, and a decision rendered therein

as such, are we bound to exercise our discretion under Article 226 of the Constitution in favour of the parties? We would think that in the

circumstances of this case, having regard to the public interest also, which would be secured in the matter, we need not interfere with the judgment

of the learned Single Judge, but we only make it clear that the appellants, who have been allotted new places in the building of the Authority, will

not be evicted from their places provided the amount due for the equivalent area is paid. The amount, which they have also paid by way of 25 per

cent will be taken into consideration and the same will be adjusted and if more amounts are due towards the amount payable under Clause 3(7) for

equivalent area, the same alone will be demanded from them. If the amount paid is in excess, the same will be refunded. Regarding the aspect that

the petitioners are being called upon to pay the amount which they received under the Land Acquisition Act, we leave this aspect open. In all other

respects, the appeal shall stand dismissed.