Delhi High Court Smt. Sheelawanti And Another vs D.D.A. And Another on 3 February, 1995 Author: D K Jain Bench: Y Sabharwal, K S Bhat, D Jain ORDER D. K. Jain, J. 1. This batch of writ petitions under Article 226 of the Constitution of India assails the price demanded from the intending purchasers of the flats allotted under the "Registration Scheme on New Pattern 1979." (the Scheme for short) sponsored by the Delhi Development Authority (the D.D.A.). 2. The petitioners are registrants of flats under the scheme. In the brochure published by the respondent D.D.A, regarding the Scheme, the terms and conditions were specified along with the details of scheme "formulated to reduce the sale price of MIG/LIG and Jania flats so as to be within the reach of the common man". Apart from prescribing period of registration, eligibility criteria, "area". "Accommodation", the "likely cost" and other conditions were stipulated in Clauses 13 and 14 respectively. Dispute being only qua the cost, the same set out in Clause 13 for each of the three categories of the flats was.: M. 1. G. Rs.42,000/- L. I. G. Rs. 8,000/- Janata Rs. 8,000/-

("the prices are indicative and do no repre sent the final cost")

Clause 14 of the said brochure stipulated :

"It may please be noted that the plinth area of the flats indicated and the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification depending upon the exigencies of lay out, cast of construction etc. etc."

The petitioners grievance is that instead of price quoted in the brochure, the D.D.A. demands and has issued demand letters requiring them to pay for a flat under the L.I.G. category about Rs. 3,30,000/- and-for M.l.G. category between Rs. 4,40,000/- to Rupees 5,20,000/- which amounts are highly exhorbitant and arbitrary. They seek an appropriate writ, order or direction quashing the illegal demands made by the D.D.A. with further direction to them to render a true and faithful account of the actual cost incurred on the construction of the flats and for acquiring the land on which the flats stand and handover possession of the flats to the allottees at the same cost as stated by the respondents at the time of registration under the Scheme. 3. The matter was initially heard by a Bench comprising late Sun and a Bhandarc, J. and Arun Kumar, J. and the orders were reserved. Meanwhile, a miscellaneous application, being C. M. No. 6491 of 1993, was filed in C.W.P. No. 1121 of 1991, to report that another Bench comprising D. P. Wadhwa and Vijender Jain, JJ. and pronounced a judgment in the case of Ashok Kumar Bahl v. Union of India, (C.W.P. No. 3267/9!) on 25 August 1993 (1993) 52 Delhi LT 153 : (AIR 1994 Delhi 149) which had a direct bearing on the controversy involved, similar issues had been considered and decided, the writ petition had been allowed and the relief similar to the one claimed herein had been granted and that this batch of writ petitions was liable to be disposed of in terms of the said judgment. On notice, the respondent D.D.A. resisted the application saying that important decisions vital to the issue raised had escaped attention of the Court in A. K. Behl's case and as such, the same is not binding. In view of at least six judgments, noticed by the

Bench, in which escalation of cost of flat son account of cost of construction and revision of land rates had been challenged and different Division Benches, in view of the judgment of the Supreme Court in Bareili Development Authority v. Ajai Pal Singh, had declined to interfere in the matter of escalation in cost, the Division Bench felt it appropriate that the matter be decided by a larger Bench to decide particularly the following questions: 1. Whether under Article 226 of the Constitution of India, this Court can interfere in the matter of pricing/costing of flats including escalation in cost of land particularly in view of Clauses Nos. 13 and 14 of the brochure regarding the Registration Scheme on New Pattern 1979 under which the petitioners are registrants for allotment of flats? 2. Is the impugned revision of cost of land by the Lieutenant Governor of Delhi illegal and arbitrary? 4. Thus, on their recommendation, a Full Bench has been constituted to decide the afore noted questions. After the said reference, in one of the petition Rule F.B. has been issued and during arguments learned counsel for the parties also agreed that all these matters be decided by the Full Bench at this stage itself and this is how all these matters have come up before us. 5. We have heard learned counsel for the parties at length, who have taken us through their respective written submissions along with supporting material on record. 6. Succintly put, the costing of flats is challenged as being illegal and arbitrary, inter alia, on the grounds that (i) the fixation of disposal price indicated in the scheme was a one time exercise based on all the existing materials and factors and having fixed the price at that stage there is no power with the D.D.A. to do so again in regard to the same Scheme; (ii) the authority, in exercise of its power under Article 6 of the D. D. A. (Management and Disposal of Housing Estates) Regulations, 1968, is bound to take into account only factors that are relevant having regard to the nature and objects of the Scheme and by loading irrelevant price elements and increasing the cost factor the D.D.A. has distorted and destroyed the Scheme and acted arbitrarily; (iii) several irrelevant factors which constitute profit elements and also in late cost of construction have been taken into consideration while determining the cost of the flats; (iv) the D.D.A. being a public utility undertaking enjoined by the law constituting it generally and by the scheme in particular, it has to ensure availability of housing at reasonable price and it is under an obligation to ensure that the right of the individuals to minimum housing, which is enshrined under Article 21 of the Constitution is translated into reality. Similarly, while inviting reference to the working data placed on record by the D.D.A., it is pleaded that the increase in land premium from Rs. 62/- in the year 1979 to Rs. 500/- per square meter for E.W.S.,Rs; 660/-per square meter for L.I.G. and Rs. 870/- per square meter for M.l.G. in 1990 is arbitrary. It is alleged that a deeper scrutiny of the facts and figures furnished by the D. D. A. would reveal that the entire costing of development is vitiated because it has taken into account factors which are arbitrary inasmuch as (a) D.D.A.'s assertion that lands were not acquired and developed before hand but that exercise is a continuous process is false; (b) assuming the process of development is continuous, there is no warrant in applying 1975 C.P. index across, the board if development took place in 1983 or 1985 or 1987; (c) interest, escalation, administrative and departmental

charges are levied on basic services; and (d) some amounts like escalation and interest have been loaded twice over, Analysing the data furnished for working out the cost of construction, it is submitted that there is no justification for including therein expenses under various heads. It was vehemently argued that for all these reasons revision of cost price of land and flats is arbitrary, without jurisdiction; the impugned demand letters issued in the bunch of writ petitions being illegal and vitiated and in any case the D.D.A. having failed to render true account of cost of acquisition of land and of cost of construction of flats, the demand letters be quashed and the D.D.A. be directed to handover the flats forthwith on payment of price fixed initially, as mentioned in the brochure. 7. On behalf of the D. D. A., by way of a preliminary objection it is contended that mechanism of price fixation being entirely in the realm of executive functions and no case of arbitrariness or discrimination having been made out, it is not a case for interference by this Court in the exercise of writ jurisdiction under Article 226 of the Constitution of India, more so when the dispute raised is in the realm of a contract simpliciter. On merits, it is urged that: (i) the brochure issued for the Scheme made it abundantly clear that the prices indicated therein were illustrative, tentative and subject to revision and thus no assurance was ever given to the intending purchasers that they will be given the flats at the price indicated in the brochure; (ii) though as per the judicial pronouncements, the D.D.A. is not under obligation to follow no profit no loss principle but still as an overall guiding policy, the D.D.A. offers flats on no loss no profit basis and in fact the flats offered by the D.D.A. are highly subsidised and are much cheaper than the prices prevailing in the market; (iii) the land rate charged by the D.D.A. are subsidised and are much lower than the land rates prevailing in the market; (iv) the land component of the cost of flat is taken on the basis of the price of land as fixed from time to time by the Lieutenant Governor, which was fixed in 1979 at Rs. 62/-per square meter and despite steep increase in the price of land from 1979 onwards the land price was revised only in the year 1990, which in fact should have been done periodically soon after 1979 itself; (v) if the D.D.A. is directed to charge the land rates of 1979 while making allotments in 1990, it would not only be erroneous but it will be impossible for it to recover even a fraction of cost of flat which cost has already been incurred by the D.D.A.: (vi) the D.D.A.'s action in providing flats for a price computed on land rates of 1979 and cost of development and construction prevailing at the relevant time and later revising the price necessitated by increase in land rates and cost of construction at the time of allotment cannot be said to be discriminatory; and (vii) the method of charging land rates prevailing on the date of allotment is perfectly valid and reasonable, which has been upheld by this court in the case of allotment of land to cooperative societies in the case of Federation of Co-operative Group Housing Societies v. Union of India, 1993 (2) Delhi Lawyer 117 (DB). 8. During the course of hearing, we directed the D.D.A. to file an affidavit along with documents explaining as to how likely cost of the flats mentioned in 1979 was arrived at the component of land price in the said cost, the basis thereof and increase in land price, if any, between 1979 and 1990. The D.D.A. was directed to further state whether there has been any increase

in land price after the issue of impugned circular dated 6 December 1990 and if so, when, its basis and the authority which took the decision. 9. Again on 11 August 1994, at the instance of the petitioners, we directed the D.D.A to the file an affidavit furnishing the following information: (1) The actual cost of acquisition and actual cost of development of land and years in which fiats in question had been constructed including the years of acquisition, development and construction; (2) Copies of the registers required to be maintained in Form 'A' and 'B' to D.D.A. (Management of Properties) Regulation Act, 1961; (3) The rate of interest at which the loan was taken by the D.D.A. from various authorities; and (4) The delegation/authorisation, if any authorising the Lieutenant Governor to go into the question of land premium. The D.D.A. was also directed to produce the original relevant record on the next date. 10. In response thereto, affidavits dated 27 July 1994 and 6 October 1994 have been filed, answering the querries and explaining the basis for determination of land rate, which ultimately resulted in the issue of impugned notification dated 6 December 1990. 11. Before we deal with various contentions raised before us in these petitions, the first and the foremost question which needs consideration is the scope of judicial review in cases like the present involving fixation of price for the land and the flats thereon. The scope of judicial review has been subject matter of numerous judicial pronouncements and learned counsel for the parties have invited our attention to various judgments supporting their respective viewpoint. It is not necessary to refer-to all the said decisions because each of these has been rendered on its own facts/situation. We shall refer to some of them, which we consider are relevant for the present purpose. 12. We may first refer to the decision of the Supreme Court in Shri Sita Ram Sugar Co. Ltd. v. Union of India, , wherein we find that most of the earlier judgments on the question have been considered. In that case, the Court was examining, the validity of the notifications issued by the Central Government in exercise of its power under sub-section (3) of Section 3 of the Essential Commodities Act, 1955, fixing the price of levy sugar in a particular year. Notifications were challenged as being ultra vires the said Act and violative of the fundamental rights of the petitioners, as fixation of price of levy sugar was dubbed to be discriminatory, arbitrary and unreasonable, inter alia, on the grounds that while printing material factors which vary from factory to factory, like crushing capacity of plant, the sugar cane price paid, the capita! employed in the manufacture of sugar, etc., have been ignored and irrelevant method of overall cost profiles of factories grouped together in zones without regard to their individual capacity and cost characteristics had been taken into consideration. Declining to interfere in the matter, the Court observed as under: "Where a question of law is at issue, the court may determine the rightness of the impugned decision on its own independent judgment. If the decision of the authority does not agree with that which the court considers to be the right one, the finding of law by the authority is liable to be upset. Where it is a finding of fact, the court examines only the reasonableness of the finding. When that finding is found to be rational and reasonably based on evidence, in the sense that all relevant material has been taken into account and no irrelevant material has influenced the decision,

and the decision is one which any reasonably minded person, acting on such evidence, would have come to. Then judicial review is exhausted even though the finding may not necessarily be what the court would have come to as a trier of fact. Whether an order is characterised as legislative or administrative of quasijudicial or, whether it is a determination of law or fact, the judgment of the expert body, entrusted with power, is generally treated as final and the judicial function is exhausted when it is found to have"warrant in the record" and a rational basis in law." 13. Further, while holding that price fixation is in the nature of a legislative action even when it is based on objective criteria founded on relevant material and that the Government cannot fix any arbitrary price, the Supreme Court observed thus: "The court has neither the means nor the knowledge to re-evaluate the fuctnal basis of the impugned orders. The court, in exercise of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence." 14. Relying on the observations in its earlier decision in Gupta Sugar Works v. State of U. P., to the effect that the Court neither acts like a Chartered Accountant nor like an Income-tax Officer and it has only to examine whether price determined was with due regard to considerations provided by the statute and whether extraneous matters had been excluded from determination and while upholding (para 58) that price fixation is not within the province of the Courts and that judicial function in respect of such matters is exhausted when there is found to be rational basis in the conclusions reached by the concerned authority, it observed: "Judicial review is not concerned with matters of economic policy. The court does not substitute its judgment for that of the legislature or its agents as to matters within the province of either. The court does not supplant the"feel of the expert" by its own views. When the legislature acts within the sphere of its authority and delegates power to an agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are consistent with the laws of the land." 15. Similar observations to the effect that "price fixation" is neither the forte nor the function of the Court and it is, not within the province of the Court to examine the price structure in minute detail, if it is satisfied that the pricing is not arbitrary or is not a result of the application of any wrong principle are also found in an earlier judgment of the Supreme Court in Kerala Stale Electricity Board v. Mis. S. N. Govinda Prabhu and Bros., . 16. We may now refer to another decision of the Supreme Court in Bareili Development Authority v. Ajay Pal Singh, (supra), which dealt with an issue similar to the one arising in the present case. Therein, the Bareili Development Authority (B.D.A. for short) had undertaken construction of dwelling units for people belonging to different income groups styled as lower income group, middle income group, high income group, and economically weaker sections and had issued an advertisement offering to register names of the intending applicants desirous of purchasing dwelling houses/flats in any one of the different income groups intended to be constructed by the B.D.A. In the brochure containing the

terms and conditions, a "general information table" was given indicating the types of houses corresponding to income groups, cost, etc., and the note below the "general information table" given in the said brochure stated that the Cost was only the estimated cost which was subject to increase or decrease according to the rise or fall in the price at the time of completion of the houses/flats. By Clauses 12 and 13 in the said brochure a Tight was reserved by the authority to change, alter or modify any of the terms and/or conditions of allotment given in the brochure as and when felt necessary. Subsequently the Authority revised the cost of the flats, informed the registrants of the flats about it, requiring them to pay accordingly, which was challenged, inter alia, on the ground that the cost demanded, as compared to the one advertised in brochure, was much beyond the means of the petitioners and was arbitrary. While allowing the appeals against the judgment of the Allahabad High Court the Supreme Court, referring to the terms and conditions in the brochure including clauses I2and 13, referred to above, observed that there being no misstatement or incorrect statement or fraudulent concealment in the information supplied in the brochure on the strength of which applicants had applied and got their names registered, thus resulting in a concluded eon-tract, they could not be heard to say that the B.D.A. had arbitrarily and unreasonably changed the terms and conditions of the brochure to the prejudice of the petitioners, particularly also for the reason that some of the registrants had given written consent accepting the change and varied terms and conditions. In Para 21, it was held that: "Even conceding that the B.D.A. has the trappings of a State or would be comprehended in other authority for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly Installments to be paid, the 'authority' or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. In this sphere, they can only claim rights conferred up on them by the contract in the absence of any statutory obligations on the part of the authority (i.e, B.D.A. in this ease) in the said contractual field." 17. It was thus held that the contract entered into between the B.D.A. and the registrants was non-statutory, purely contractual and the rates were governed only by the terms of the contract and no writ or order could be issued under Article 226 of the Constitution. 18. Following the decision in the B.D.A.'s case a number of Benches of this Court declined to go into the question of the costing of flats and of land and upheld the pricing of the flats even under the present scheme as well. These judgments are Veena Saxena v. D.D.A. (1992) 47 Delhi LT 266; Abhimanyu Kumar Sathi v. D.D.A. (1992) 47 Delhi LT 295; Mahanand Sharma v. D.D.A. (CVV No. 1327 of 1991, dated 15 January 1992); Vinod Kumar Gupta v. D.D.A. (CW No. 778 of 1992, dated 22 October 1991 (sic)); J. K. Dhingra v. D.D.A. (CW No. 2787 of 1990, dated 16 May 1991); and Puran Chand v. U.O.I. (CW No. 3876 of 1992, dated 24 May 1993). 19. The consistent view of this Court, thus, was that escalation in prices of the flats constructed by the D.D.A. under different schemes, including the present scheme, could not be challenged under Article 226 of the Constitu-

tion till the decision in Ashok Kumar Behl v. D.D.A., (1993) 52 Delhi LT 153: (AIR 1994 Delhi 149), in which the court went into the question of pricing and quashed the escalated price of the flats allotted under the scheme. It appears that the Court did so apparently for the reason that despite specific directions in that behalf the D.D.A. had failed to place the relevant material before the Court to explain how the price fixation had been done and on what basis. Court queries in this behalf were not answered, which led to the belief that the D.D.A. was suppressing some thing and had acted arbitrarily to the prejudice of the writ petitioners. These significant factors put the case out of the ambit of the ratio of the Bareili Development Auth ority's case. : 20. From the above, it is clear that the scope of judicial review in the cases involving costing and fixation of prices is very much limited. Apart from the observations and the findings recorded in B.D.A.'s case (Page 126), extracted above, that a public body entering in the realm of contract acts merely in its' executive capacity and thereafter the relations are no longer governed by constitutional provisions but by contract, which apply in this case as even otherwise, what has to be seen and examined by the writ court is whether the pricing of flats demanded by the D.D.A, for different categories of allottees is whimsical or arbitrary. The date placed on record by the D.D.A., prima facie, does not warrant so. There are of course some contentious points, like formula and basis for working out the land rate, cost of development, construction and inclusion of certain expenses which could only be decided on evidence, which we do not propose to do in writ jurisdiction. Merely because the method of valuation suggested by the petitioners would be more fairer or logical, the method or the basis adopted by the D.D.A. cannot be struck down as arbitrary or whimsical. 21. We find that the facts of the present case are akin to the facts in B.D.A.'s case, except that in that case the registrants, except some of them, had, after the revision in the price of flats, accepted the same. There is no such acceptance of the final price of the flats intimated to the petitioners before us. Nonetheless, the registrants under the present scheme having accepted the terms and conditions in the brochure, including Clauses 13 and 14, were put on notice that the prices quoted in the brochure were tentative and are liable to be revised. They having applied for registration under the scheme, paid the requisite registration deposit, did enter into a contract with the D.D.A., cannot now make a grievance of the revised rates. In the instant case, the flats have been allotted under the scheme; reflected in the brochure, which contains no particular formula to arrive at the price of the flats nor has any statutory provision, enumerating any criteria or the principles to fix such a price been pointed out. As such, this Court cannot examine whether the price fixed is astronomical, exhorbitapt, or unreasonable, etc. This court having no expertise, knowledge or wherewithal to evaluate the cost aspect is not concerned with the correctness or otherwise of the price fixed and will not interfere. 22. It is in this legal and factual background of the case that we have to examine the different contentions raised by learned counsel for the petitioners, which basically concern the basis and the method of determination of the price of f he land and the flats over it. 23. There is no doubt that when compared to the prices fixed for the previous years, and particularly in the year 1979, when

the price of the land was fixed at Rs. 62/- per sq. meter, the impugned prices, now notified by the Lieutenant Governor in December, 1990, look to be quite excessive having regard to the vast difference. Admittedly, for several years (for over a decade), the land rates had not been revised, for one reason or the other, and to some extent obviously due to lapse of the administrative machinery, same rates are taken as the component of the prices of the flats right from the year 1979 to 1990. It is obvious that if only the land rates were being revised every year with gradual increase, perhaps the escalation would have gone unnoticed. For example, the land rates near Jahangir Puri were Rs. 200/- per sq. yard in the year 1979 and it became Rs. 4,380/-in the year 1990 effectives from the period 01 April 1990 to 31 March 1991. In between the years 1979 to 1991, gradual increases were not notified although it is a known fact that there has been phenomenal increase in the land prices all over Delhi during this period and particularly in the late 80s. In these circumstances, the impression caused at the first flash by the alleged sudden increase in the cost of the land cannot be considered to be a valid ground to attack the prices, now notified, as arbitrary. 24. In view of the terms and conditions, (Clauses 13 & 14) in the brochure it cannot be said that pricing is one time process and the D: D. A. having fixed in the "broche" some price could not revise it or that the nature or character of the scheme is engaged thereby. Obviously, it is a continuous process. Different sectors/colonies come into being at different times with continuous spiralling escalation in prices, the costing would naturally materially vary. It is true that housing accommodation is a vital requirement for a proper living and a city like Delhi, where State controls the land and regulate the development activities, the instrumentalities of the Stale, like the D. D. A., has a responsibility to act fairly and reasonably while fixing the price for sale of the land, houses or the flats belonging to it. However, it cannot be said that the D. D. A. is obliged to sell them at a price that may result in loss to it or at a price which does not contain any profit element. It has been held by the Supreme Court in Oil and Natural Gas Commission v. Association of Natural Gas Consumer Industries of Gujarat, that generation of some commercial profit to the public undertakings is not prohibited. Similar view has been expressed in Premji Bhai Farmer v. D. D. A., . In view of it, it cannot be said that taking into account of some profit element, if any, which the D. D. A. denies to have taken in account while fixing the price, parse, renders the price fixed as arbitrary or unreasonable. 25. Even otherwise, the Scheme itself contemplates varying rates depending upon the class to which an allottee belongs – such as economically weaker section, Low Income Group or Middle Income Group. But, in each case, the consideration payable for the flat is referred to as the "cost". In other words, even to those who belong to the economically weaker sections, the consideration payable is called the "cost" of the flat. If the basic cost (i.e. the actual expenditure incurred by the DD A) is to be the "cost" for the flats then, the same rate should have been uniformaly applied to all the classes of allottees. Admittedly, it is not so. Therefore, the word "cost" referred in the Scheme cannot be equated to the basic expenditure incurred by the DDA. The term has a wider significance and is used to convey the meaning of the term "price". 26. The Scheme uses the word

'cost' at several places. But it is clear that it is used in the sense of a price to be fixed. 27. The new Lexicon, Webster's Dictionary of the English Language (1988 Edition) gives one of the meaning of the term cost as "the price paid or to be paid for something". 28. The Scheme itself has, equated the "cost" to the word "price". Clause 13 gives the "likely cost of flats" and thereafter says "the prices are indicative and do not represent the final cost". Again clause 14 says ". . . the estimated prices mentioned in the brochure are illustrative. . . ." 29. We have been taken through the affidavits and other material on record by learned counsel for the parties. We, however, do not find that the fixation of land price or cost of construct ion of the flats worked out by the respondent, DDA is arbitrary or whimsical. 30. As a last resort it was contended by Mr. Mukul Rohtagi, learned senior counsel for some of the petitioners, that the material date for determination of the price or rate of a flat is the date of draw of lots and not the date of communication of the letter of allotment for a specific flat and, therefore, in those cases where draw of lots took place prior to 06 December 1990 the land price should the charged at Rs. 62/- per square meter. In view of the recent judgment of the Supreme Court in I). D. A. v. Pushpendra Kumar Jain, , there is no merit in the contention. In that case, the Supreme Court was dealing with the same Scheme with which we are concerned in the present case. The main question revolved around the two reasons given by the High Court while upholding the writ petitioner's contention that the price charged should be with reference to the date of the draw held regarding the persons to whom flats are to be allotted and not the date on which the allotee was intimated of the allotment, because, intimation was delayed by the D. D. A. The two reasons given by the High Court were : (1) Though the draw was held on 12 October 1990, the allotment-cum-demand letter was issued to the respondent only, on 9/13 January 1991. This delay was the result of inefficiency of the D. D. A. (2) Inasmuch as the issue of allotment-cum-demand letter was delayed in the office of the D. D. A., it cannot charge the revised land rates to the respondent inasmuch as the, respondent became entitled to get the flat on 12 October, 1990, the revision of land rates subsequent to the draw of lots cannot affect the respondent. (Respondent before the Supreme Court was the writ petitioner) While reversing the order of the High Court, the Supreme Court observed, as to the Scheme :– "The scheme evolved by the appellant does not say so either expressly or by necessary implication. On the contrary, clause (14) thereof says that"the estimated prices mentioned in the brochure are illustrative and are subject to revision/modification, depending upon the exigencies of lay out, cost of construction etc." It may be noted that registration of applicants under the said scheme opened on 01 September 1979 and closed on 30 September 1979. About, 1,70,000 persons applied. Flats were being constructed in a continuous process and lots were being drawn from time to time for a given number of flats ready for allotment. Clause (14) of the Scheme has to be understood in this context – the steady rise in the cost of construction and of land. No provision of law also could be brought to our notice in support of the proposition that mere drawl of lots vests an indefeasible right in the allottee for allotment at the price obtaining on the date of drawl of lots. In our opinion, since the

right to flat arises only on the communication of the letter of allotment, the price or rates prevailing on the date of such communication is applicable unless otherwise provided in the Scheme. If in case the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment. We see no unfairness in the above procedure." 31. In the next para, the Court, however, noted that the validity or justification of the revision of rates by Circular dated 06 December 1990 was not questioned in the writ petition and, therefore, the Court had to proceed- on the assumption that the said revision of land rates is valid. 32. The fact remains that the Supreme Court had before it the very Scheme and the Court pronounced its judgment regarding the theme of the Scheme. The Scheme did not hold out any promise that the increase in the cost of construction and of land would be ignored and that the price to be charged would be with reference to the date of allotment. The Court rejected the contention that the allottees cannot be charged with the price of the flat as on the date of communication of allotment. In other words, the price was chargeable with reference to the dale of communication of the allotment. This dale will always be later to the date of allotment. If that be so, it necessarily follows that no allottee can claim that the price of the flat should be fixed with reference to the date of the Scheme – a date which is far anterior to the date of drawing the lots. 33. At this stage itself, we may also deal with another contention of Mr. Rohtagi. He urged that the land rates notified by the Lieutenant Governor on 06 December 1990 are ultra vires the D. D. A. Act. The contention is that the power to determine the price of the property vests in the D. D. A. and that power could have been delegated to the Vice-Chairman, but, here, the power was exercised by the Lieutenant Governor. 34. The power to determine the price of land vested in the D. D. A. as per R. 6 of the D. D. A. (Management and Disposal of Housing Estates) Regulation, 1968, is a power to determine the price of the properly to be disposed of by the D. D. A. In the instant case, the properties disposed of are the flats; land price is a component of the price of the entire property. Price of the flat, as such, was determined by the D. D, A. While doing so, it accepted the value of the land, as the price notified by the Lieutenant Governor. The fixation of the price of the land by the Lieutenant Governor, therefore, cannot be equaled to the determination of the price of the property disposed of. While fixing the price of the flats or houses, the D. D. A. may in normal course rely on the cost of construction determined by its Engineering Depart- ment; for the cost of the land it may accept the price notified by the Lieutenant Governor. The totality thus arrived at would be the price determined by the D. D. A. This will not be contrary to R. 6 at all. 35- Before the Lieutenant Governor notified the price of the land, the land rates were processed at various levels in the D. D. A. and ultimately the price arrived by the Financial Advisor (H), and the Director (L. C.) were placed before the Finance Member and the Vice-Chairman, both of whom signed the proceedings in taken of their approval; only thereafter, the papers were sent to the Lieutenant Governor, the Chairman of the D. D. A., for final approval. Therefore, in effect, the Vice-Chairman was a party to the determination of the price of the land. 36. We may now adverts to the ques-

tions: referred to the Full Bench. In keeping with our observations and findings recorded above, we are of the opinion that, in view of Clauses (13) and (14) of the brochure and the transaction being contractual, this Court cannot interfere under Art. 226 of the Constitution in the matter of pricing/costing of flats, including escalation of cost of land, etc. The answer to the first question has to be in the negative. 37. As regards the second question referred to the Full Bench, as noticed above, we are of the view that the impugned revision of cost of land by the Lieutenant Governor of Delhi is neither illegal nor arbitrary. C. W. P. No. 1102/93 38. In this writ petition, filed by an association of retired/retiring public servants, apart from the challenge to the pricing of the flats, raised in other petitions, there is an additional ground and it would be convenient to deal with it in this common judgment. It is averred that in the year 1982-83, the D.D.A. had floated a Special Housing Registration Scheme – 1982 for out of turn allotment for retired retiring public servants who intended to purchase flats/houses to be constructed by the D. D. A. and the said scheme was, made applicable to all those persons who were already registered under various housing registration schemes announced by the DDA, including the present scheme. Under clause 4 of the said scheme, it was stipulated that 50% of the flats will be disposed of on cash down and 50% on hire purchase basis. It appears that in the year 1993, the DDA again issued an advertisement inviting applications from the retired/retiring government servants for out of turn allotment on the same basis as was done under the aforesaid scheme of 1982. The petitioners availed of the scheme and applied for out of turn allotment. However, when the members of the petitioner association received the letters of demand, all of them were required to make payment on cash down basis. It is contended that this sudden change in the policy of the D.D.A. without notice is illegal, discriminatory and the D. D. A. was estopped from demanding the payment in lump sum, which is contradictory to the very object of the scheme on the basis whereof the petitioners had registered themselves and had made initial deposit at the time of registration. 39. In the answer filed on behalf of the D. D. A., it is stated that the eligible under the scheme who could not be allotted flats immediately on the basis of their seniority, the special Housing Scheme of 1982 was floated for out of turn allotment to afford relief to retired/retiring persons whose need is urgent and immediate. Such persons get their retirement benefits and thus are in a position to pay cash down price. Clause 26 of the scheme of 1982, reserved the right of the D. D. A. to alter any of the terms and conditions of the scheme in its discretion as and when considered necessary. The Scheme was, therefore, altered, on a policy decision taken that the payment should be made on cash down basis by such of the allottees who seek to avail out of turn allotment. 40. We feel that it is not necessary for us to go into the larger question whether under Clause 26 of the 1982 scheme, the D. D. A. could abandon its scheme of allotting flats on hire purchase basis and insist for lump sum payment because we find that in the present case no fresh scheme was announced in the year 1993 and the registrants under various schemes had been invited to apply for out of turn allotment on the basis of the scheme announced in 1982, which admittedly provided for 50% allotment on hire purchase basis. In our

view, the members of the petitioner association having acted to their detriment on the basis of the original scheme of 1982, the D. D. A. cannot by a unilateral action, without notice, abandon the scheme originally announced. 41. The D. D. A. is estopped from acting contrary to the promise made to the registrants under the scheme, who acted on the said promise and the doctrine of promissory estoppel is clearly applicable to the facts on hand. We, therefore, allow this writ petition to that extent and issue a writ in the nature of Mandamus directing the D. D. A. to adhere to its original scheme of allotting flats on hire purchase basis in accordance with the brochure issued in the year 1982. 42. For the foregoing reasons, all the writ petitions, except C. W. P. No. 1102/93 to the limited extent indicated above, must fail and are accordingly dismissed. Rule is discharged. However, the petitioners are granted time up to 31 March 1995 to make payment of the amount demanded from them vice impugned demand notices and till then the allotment made in their favor shall not be cancelled. If, however, the petitioners fail to make full payment in terms of the demand letters, on or before the said date, the D. D. A. will be at liberty to lake action in accordance with the terms and conditions of allotment. However, we feel that in view of the judgment in A. K.. Bahl's case, (supra) which is given in its own facts and perhaps misled the petitioners to approach this Court seeking a similar relief, not available to them, it would be fair to direct the D. D. A. not to charge interest on the amount demanded from the date of the judgment in A. K. Bahl's case or from the date of filing of the writ petitions, whichever is later, up to 31 March, 1995. It is, however, clarified that the petitioners shall be liable to pay interest in terms of the demand letters for delay in payment on the dates specified therein, prior to the afore- said period. 43. There will be no order as to costs. 44. Order accordingly