

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 934/94, 967/92, 1179/93, 3085/93, 1784/92,
1034/95, 1512/2000, 1136/93, 2322/92, 822/99, 1070/2000 &
5145/07.

(1) **WRIT PETITION NO. 934 OF 1994.**

Friends Cooperative Housing Society
Limited, Nagpur, duly registered
under the Maharashtra Cooperative
Societies Act, 1960, bearing Registration
No. HSG/NGP/123 of 1962, having
its registered office at 41, Tatya Tope
Nagar, Nagpur-15, through its
Secretary.

.... PETITIONER.

....Versus....

1. The Nagpur Improvement Trust, through
its Chairman, Civil Lines, Nagpur,
2. The State of Maharashtra, through its
Secretary, Department of Urban
Land Development, Mantralaya Annexe,
Bombay-32,
3. Matru Seva Sangh, a society registered
under the Bombay Public Trusts Act,
having its registered office at Sitabuldi,
Nagpur, through its Secretary,
4. Sati Mata Shikshan Sanstha, through
its Secretary, 11, Vyankatesh Nagar,
Khamla Road, Nagpur-25.

.... RESPONDENTS.

Mr. Uday Dastane, Counsel for petitioner,
Mr. A.S. Fulzele, A.G.P. for respondent no.2,
Mr. S.K. Mishra, Counsel for respondent no.1,
Mr. S.S. Joshi, Counsel for respondent no.3.
Mr. S.D. Deshpande, Counsel for respondent no.4.

(2) **WRIT PETITION NO. 967 OF 1992.**

- PETITIONERS:**
1. Dharampeth Grihanirman Sahakari Sanstha, bearing Registration No.1041/55, 89-C, Ramnagar, Nagpur-10, through its Secretary – Shri Gangadhar s/o Narayan Morone, aged 61 years, Occu: Pensioner, r/o 117, Abhyankar Nagar, Nagpur.
 2. Citizen Uplift Society, 23, Gawande Lay-out, Khamla Road, Nagpur-15, by its Secretary, Shri Ramrao Wankhede.

: VERSUS :

- RESPONDENTS:**
1. The Nagpur Improvement Trust, through its Chairman, Kings way, Sadar Nagpur-1.
 2. Bhartiya Adim Jati Sewak Sangh, through Secretary Shri M.N.More, Yogabhyasi Mandal, Ramnagar, Nagpur-10.
 3. National Centre for Rural Development, through Managing Director Shri Ram Kale, 253 Shivaji Nagar, Nagpur-10.

INTERVENORS: Deendayal Nagar Semutkarsha Sanstha Ltd., through its Secretary, Registered Office at 29-Dharampeth Layout, Deendayal Nagar, Nagpur-22.

Mr.R.S.Parsodkar, Advocate for the petitioners.
Mr.S.K.Mishra, Advocate for N.I.T.
Shri S.W.Ghate, Advocate for the intervenor.

(3) **WRIT PETITION NO.1179 OF 1993.**

PETITIONER: Saraswati Cooperative Housing Society Ltd.
bearing registration No.1796/60, through
its Secretary, Shri H.B. Chikerur, aged about 74
years, Occupation : Retired from Service,
R/o 57-58, Deendayal Nagar, Nagpur.

: VERSUS :

RESPONDENTS: 1. The Nagpur Improvement Trust, through its
Chairman, near Liberty Cinema Sadar,
Nagpur.
2. Halba Koshti Housing Society, through its
Executive Member Shri Asai,
Civil Lines, Nagpur.

INTERVENOR : Dnyan Vidnyan Vardhini, 185, NIT Layout,
Trimurti Nagar, Ring Road, Nagpur, through
its General Secretary Smt. Preeti P. Siras.

Mr.R.S.Parsodkar, Advocate for the petitioner.
Mr.S.K.Mishra, Advocate for N.I.T./respondent no.1.
Shri Ambilwade, Adv. for respondent no.2.
Shri D.L.Dharmadhikari, Adv. for the Intervenor.

(4) **WRIT PETITION NO.3085 OF 1998.**

PETITIONER: Telecom Engineering Cooperative
Housing Society Ltd., through its
Secretary Shri G.V.Sohoni, 71, Telecom
Amenity Hall, Telecom Nagar, Nagpur.

: VERSUS :

RESPONDENTS: 1. The Nagpur Improvement Trust,
through its Chairman, Near
Liberty Cinema, Sadar, Nagpur.

2. The Corporation of the City of Nagpur through the Municipal Commissioner, Civil Lines, Nagpur.

3. Vidarbha Cricket Association, through its Secretary, Nagpur.

Mr.A.M.Ghare, Advocate for the petitioner.

Mr.S.K.Mishra, Advocate for respondent no.1.

Mr.R.S.Parsodkar, Advocate for respondent no.2.

(5) WRIT PETITION NO. 1784/1992

The Rani Laxmi Nagar Nagrik Sabha,
Regd. No. 567, Laxmi Nagar, Nagpur,
through its President.

.....PETITIONER

...V E R S U S...

1. The Nagpur Improvement Trust,
through its Chairman.
2. The Scientific Cooperative Housing
Society, Rani Laxmi Nagar, Nagpur,
through its Secretary.

.....RESPONDENTS

Mr. M. M. Agnihotri, Advocate for the petitioner.

Mr. S. K. Mishra, Advocate for respondent no. 1.

Mr. P. T. Trivedi, Advocate for respondent no.2.

(6) WRIT PETITION NO. 1034/1995

1. Keshao s/o Pandurang Shivankar,
aged about 53 years, r/o Plot No. 16,
Gawande Colony, Chhatrapati Nagar,
Nagpur.
2. Prabhakar Krishnarao Patrikar,
aged about 60 years, r/o plot No. 11-A,

Pendse Layout, Wardha Road, Nagpur.

3. Narayanrao Jagobaji Gawande Public Trust, through its Secretary, Shri Madhukar Pandurang Gawande, r/o Gayatri Nagar, South Ambazari Road, Nagpur.

.....PETITIONERS

...V E R S U S...

1. State of Maharashtra, through its Secretary, Urban Development, Mantralaya, Bombay-32.
2. Nagpur Improvement Trust, through its Chairman, Station Road, Sadar, Nagpur.
3. Santaji Mahavidyalaya through its Chairman Govindrao Wanjari, Wardha Road, Nagpur.
4. Shri Govindrao Wanjari, President, Santaji Mahavidyalaya, Wardha Road, Nagpur.

.....RESPONDENTS

Mr. Anand Parchure, Advocate for the petitioner.

Mrs. K.S. Joshi, A.G.P. for respondent no. 1.

Mr. R. P. Joshi, Advocate for respondent no.2.

Mr. S. P. Dharmadhikari, Advocate for respondent nos. 3 and 4.

(7)

WRIT PETITION NO.1512 OF 2000.

PETITIONER:

Janta Co-operative Housing Society Ltd.,
Nagpur, duly registered under the Maharashtra
Cooperative Societies Act, 1960, bearing
Registration No.HSG/NGP/952 of 1955, having
its registered office at 374, Shankar Nagar,
Nagpur-15 through its Secretary.

: **VERSUS** :

- RESPONDENTS:** 1. The Nagpur Improvement Trust,
through its Chairman, Civil Lines, Nagpur.
2. The State of Maharashtra,
through its Secretary, Department of Union
Land Development, Mantralaya, Annexe,
Mumbai 400032.
3. The Nagpur Municipal Corporation, Nagpur,
through its Municipal Commissioner.

Mr.U.Dastane, Advocate for the petitioner.

Mr.S.K.Mishra, Advocate for respondent no.1.

Mrs. K.S. Joshi, A.G.P. for respondent no.2.

(8) **WRIT PETITION NO. 1136 OF 1993.**

PETITIONER: Shri Gajanan Cooperative Housing
Society Ltd., Wardha Road, Nagpur through
its Secretary Shri J.G.Padnis, Plot No.53,
Gajanan Nagar, Wardha Road, Nagpur.

: **VERSUS** :

- RESPONDENTS:** 1. The Nagpur Improvement Trust,
through its Chairman, Kingsway, Nagpur.
2. Kanya Kubjya Vaishya (Halwai)
Hitkarni Sangh, through their President,
C/o Anant Gupta Bhandar, Nalsaheb Chowk,
Bhandara Road, Nagpur

Mr.V.S.Kukday, Advocate for the petitioner.

Mr.S.K.Mishra, Advocate for respondent no.1.

Mr. Shyam D. Dewani, Advocate for respondent no.2.

(9)

WRIT PETITION NO.2322 OF 1992.

PETITIONER:

Bhanudas s/o Pancham Varade,
aged about 70 years, Occu: Nil, residents
of Untkhana Dahipura Layout, near
Baidyanath Chowk, Varade Bhavan, Nagpur.

: VERSUS :

- RESPONDENTS:**
1. State of Maharashtra through its
Secretary, Urban Development Department,
Mantralaya, Bombay – 32.
 2. The Nagpur Improvement Trust,
through its Chairman, Station Road, Sadar,
Nagpur.
 3. The Divisional Officer,
C.S.E.S., Nagpur Improvement Trust, Nagpur.
 4. Asit Multi-purpose Association,
Registered No.31 N/75, through its President
Shri Shyam Bhagat, Untkhana, Nagpur.

Mr.Anand Parchure, Advocate for the petitioner.
Mrs. K.S. Joshi, A.G.P. for respondent no.1,
Mr.S.K.Mishra, Advocate for respondents no.2 and 3.
Mr.Z.A.Haq Advocate for respondent no.4.

(10)

WRIT PETITION NO. 822 OF 1999

P. M. G. Office Staff Cooperative
Housing Society Limited,
Madhav Nagar, Nagpur-through
its President, Madhav Nagar
Nagpur.

PETITIONER.

VERSUS

1. Nagpur Improvement Trust,
through its Chairman, Near
Liberty Cinema Building, Sadar,
Nagpur.

2. Vidarbha Cricket Association,
Opp. I. B. M. Building, Sadar,
Nagpur through its President.

RESPONDENTS.

Shri A. R. Patil, Counsel for the petitioner.
Shri S. K. Mishra, Counsel for respondent No. 1.
Shri A. S. Jaiswal, Counsel for respondent No. 2.

(11) WRIT PETITION NO. 1070 OF 2000

Friends Cooperative Housing
Society Ltd. Nagpur, duly registered
under the Maharashtra Cooperative
Societies Act, 1960, bearing
Registration No. HSG/NGP/123 of
1962, having its registered office at
41, Tatya Tope Nagar, Nagpur-15,
through its Secretary.

PETITIONER.

VERSUS

1. The Nagpur Improvement Trust,
through its Chairman, Civil
Lines, Nagpur.

2. The State of Maharashtra,
through its Secretary,
Department of Urban Land
Development, Mantralaya,
Annexe, Mumbai-32.

3. The Nagpur Municipal
Corporation, Nagpur,

through its Municipal
Commissioner.

RESPONDENTS.

Shri. U. S. Dastane, Counsel for the petitioner.
Mr. A.S. Fulzele, A.G.P. for respondent no.2,
Shri S.K. Mishra, Counsel for respondent No.1.

(12) **WRIT PETITION NO. 5145 OF 2007.**

The Greater Nagpur Cooperative
Development and Housing Society
Limited, having its Head Office at
51, Alhad Jyoti Apartment, Ramkrishna
Nagar, Khamla, Nagpur-25, through
its President Chandrashekhar K.
Najpande, R/o Ramkrishna Nagar,
Khamla, Nagpur-25.

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PETITIONER.

....Versus....

1. State of Maharashtra, through its
Secretary to the Urban Development
Departments, Mantralaya, Mumbai-32,
2. Nagpur Improvement Trust, through
its Secretary, having its office at
Kingsway, Sadar, Nagpur,
3. The Corporation of the City of Nagpur,
through its Commissioner, having its
Office at Civil Lines, Nagpur,
4. Sneh Manila Vikas Sanstha, through
its Secretary, Nagpur.

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RESPONDENTS.

Mr. Anand Parchure, Advocate for the petitioner,
Mrs. K.S. Joshi, A.G.P. for respondent no.1,
Mr. S.K. Mishra, Counsel for respondent no.2,
Mr. S.V. Manohar, Counsel for respondent no.4.

CORAM: ANOOP V. MOHTA & C.L. PANGARKAR, JJ.

DATED: AUGUST 29, 2008.

JUDGMENT (PER ANOOP V. MOHTA, J.)

The petitioners have challenged the action of allotment of their land by Nagpur Improvement Trust (for short “NIT”), a public body, to the public institutions and public trust being public utility plots. The points and submissions are common, interlinked and, therefore, this common judgment.

2. In Writ Petition No. 934/94, as averred, the petitioner is a cooperative housing society, which has developed various layouts and other projects successfully. The petitioner society has purchased land admeasuring about 13.45 acres comprised in Khasra Nos. 130/1, 3, 4 and 5 of Mouza Parsodi (Bhamti) in Malik Makbuza rights. The land is covered by the Bhamti Parsodi scheme of NIT.

3. The petitioner society applied to NIT for developing the said land and also gave an undertaking to agree to have the layout of the land as per plans, suggestions and directions of NIT. Pursuant to the

undertaking given by the petitioner society, NIT approved the layout of the entire land admeasuring about 13.45 acres. Accordingly, an agreement came to be executed between the NIT and the petitioner society on 27.5.1977. The sanctioned layout map is a part and parcel of the agreement.

4. The development work of the said land was almost completed by the year 1981 and some of the members of the society have constructed their residential houses on the plots allotted to them. On 8.2.1982, the society requested NIT to release entire 40,000 sq. ft. of public utility land in their favour. The petitioner society promptly submitted all the information required by the Nagpur Improvement Trust vide its communication dated 22.3.1983. On 27.11.1985, the petitioner society sent a communication along with a cheque for Rs.30,000/- as no demand came to be raised by NIT and sought release of said 20,000 sq. ft. of public utility land offered by NIT vide its communication dated 24.12.1981. NIT did not take any steps whatsoever thereafter and suddenly on 29.7.1987, after about 2 years, informed that in terms of clause 9 of the agreement, the society has to transfer free of cost the public utility land reserved for primary school and, therefore, the society

should within 7 days hand over the said land to NIT and the petitioner society should make a separate application for the said public utility land being allotted to it. With the said communication, the cheque of the petitioner society for an amount of Rs.30,000/- came to be returned by the NIT.

5. NIT issued an advertisement inviting applications from various registered charitable public institutions and registered trusts on or before 28.6.1991 for allotting the said land for period of 30 years on lease. Thereafter various representations and applications were made to NIT, however, it was rejected by a communication dated 24.8.1993, which is also a subject matter of this petition.

6. In Writ Petition No. 967/92, the petitioner-Society has challenged the action of respondent no.1 and sought further declaration that they cannot transfer or allot open space as shown by letters "A,B,C,D,A" in Annexure-3 by bifurcating the same to an institution for institutional purpose. In the year 1969, the petitioner-society purchased land bearing khsara no.87 patwari halka no.44 of Mouza Bhamti Parsodi in Nagpur vide registered sale deeds dated 16/10/1968, 12/12/1968,

26/3/1969 and 3/4/1969 for valuable consideration. It is submitted that the said lands previously belonged to Padole family from whom the petitioner-Society purchased the same as stated above. The petitioner applied to the NIT for necessary sanction of lay out and the said lay out was sanctioned on executing various documents including an agreement in question. All the development work in the lay out has been done by NIT and the cost on such development work has been paid by the petitioner-society in full.

7. As per condition no.9 in the agreement and condition no.4 of the Memorandum, the open spaces have to be transferred to the respondent-Trust. Areas covered by sewer, water pipe line, open spaces for public utility purposes have to be transferred to the respondents. However, it is submitted that the same has not been transferred. The title of the said open spaces remains with the petitioner.

8. The petitioner was surprised to see an advertisement published by the respondent NIT in various local dailies of Nagpur, whereby they wanted to transfer the land shown by letters A,B,C,D "A" in Annexure 3 to various private institutions. The open spaces by letters A,B,C,D "A" has

been bifurcated in three different portions and sought to be allotted to various private institutions. The said land is reserved for public utility purpose and not for institutional purposes as per the sanctioned layout plan. The respondent NIT wanted to transfer the said open space reserved for public utility purpose to the three institutions.

9. That, the petitioner thus submits that the action of the NIT in advertising and intending to transfer on allotment of this public utility land without there being any title, is void. The agreement clause nos.8 and 9 are void as no law permits transfer of public utility space open space i.e. Public utility space to the NIT free of cost. There is no provision under the Nagpur Improvement Trust Act nor there is any law by which the open space in the lay out or public utility land can be transferred like this and therefore, the entire action of advertising and bifurcating this land in to plots for its allotment is clearly void and illegal and the same is liable to be set aside.

10. In Writ Petition No. 1179/93 the petitioner-Society has challenged the action of respondent no.1 and further declaration that they cannot transfer or allot open space as shown by letters A,B,C,D, and D in

Annexure-2 by bifurcating the same to an institution for institutional purpose. The petitioner-society purchased the land bearing Khasra No.78 to 82 of Mouza Bhamti Taluka District Nagpur and sale deeds were executed on 10/4/1969 for valuable consideration, of the said land from Padole Family. The petitioner applied to the Trust for sanction of lay out and in order to get sanction, the petitioner was required to execute various documents. That, accordingly the layout plan was sanctioned. That, an agreement in question was drawn between the Nagpur Improvement Trust and the petitioner-society. In the sanctioned lay out plan various open space were left in the lay out for public convenience and specific land shown by letters A,B,C,D and D in Annexure 2 were kept for public utility purpose. All the development work in the lay out is being done by respondent-Trust and the cost of such development were paid by the petitioner-society in full. As per one of the condition in agreement, the open space has to be transferred to the respondent-Trust, the area covered by sewer, water pipe line etc., has to be transferred to the Nagpur Municipal Corporation. The petitioner society is in possession of the land. The title is not yet transferred.

11. The petitioner submits that the land being reserved for primary

school, the petitioner society applied to NIT for allotment for starting a school. The petitioner submits that in terms of the advertisement, respondent No.2 – Halba Mahasangh through its Executive Member Shri Asai, Civil Lines, Nagpur applied and they have been allotted the said public utility land.

12. The petitioner has challenged the said action on the part of respondent-Trust by filing present petition. This Honourable court by order dated 30.4.1993 passed order of status quo restraining the respondents from alienating this land and further restraining from making new construction over the said public utility land and also disturbing the possession of the petitioner over the said land. However, this Honourable Court on 14th June, 1993 passed the following order -

“It is restricted to the submission of Respondent no.2 is making the construction at its own risk and in the event the petition succeeds the Respondent no.2 shall not claim any compensation”.

We accept as undertaking by the Respondent no..2. Interim relief is refused, Ad-interim order earlier made shall stand vacated. Rejection of interim relief is subject to the undertaking depending upon final result is subject to the undertaking depending upon final result in

the petition. Shri Parsodkar for petitioner says that open land and public utility land left by the petitioner is in excess of the land. If that be so, it is to the petitioner to get their land modified so as to utilize the excess land for the purpose of making additional plots Order accordingly”

That in view of the above order, Halba Maha Sangh has constructed Community Hall. The same has been in use since then.

13. It is, therefore, submitted that the clause and the entire action of advertising and bifurcating this land in to plots are void and illegal and be set aside.

14. In Writ Petition No. 3085/98, the petitioner has challenged the action of respondent based upon the agreement dated 27/1/1970 executed between the petitioner and the respondent NIT. The petitioner Society was registered under Maharashtra Cooperative Societies Act vide registration No.246. On 23/2/1968, the petitioner-society purchased land area 6.81 Hects. Kh.No.15 and 17 of mouza Khamla from one Shri Vithoba Nigote. On 21/3/1969 the sub-Divisional Officer, Nagpur granted permission for change of user of the land from Agriculture to non-

agricultural purpose. Respondent no.1 has sanctioned the layout vide agreement dated 27/1/1970. As per norm, some portion of the land is reserved for public utility purpose like primary school or civic center. It is agreed between the petitioner and respondent no.1 that 10% of the area of total plots shall be kept reserved and transferred in favour of respondent no.1 and 2 free of cost for primary school, public institution and public utility purpose. In pursuance to this agreement, some land is kept reserved for primary school in the layout of the petitioner-society. The petitioner has requested respondent no.1 to release the said land in its favour to construct and/or to have primary school or such other educational institution. In may 1997, the office bearers of the petitioner society found some work of levelling of ground and digging of well in the portion kept reserved for public utility purpose i.e. primary school. On enquiry, the office bearers of the petitioner society came to know that the said work had started by respondent no.3 - association. On 19/5/1997, the petitioner protested this allotment of land to respondent no.3. On 16/6/1997, respondent no.1 confirmed allotment of land in favour of respondent no.3. The work of levelling was stopped for some period but later on it was recommenced. Hence, this petition.

15. In Writ Petition No. 1784/92, the petitioner is a Society registered under the Societies Registration Act. Basically it consists of the residents of Laxmi Nagar locality. By this petition, the challenge is to an advertisement dated 18.01.1992 proposing allotment of plot no. 301/1 to 5 issued by respondent-NIT. By an agreement subsequently, as it was released/allotted in favour of respondent no. 2-Society. The challenge was raised accordingly. The challenge is same in the present petition also on similar lines with other petitions against NIT with regard to the unauthorised allotment/distribution of plots not owned by NIT; there is no question of automatic transfer agreement and as such the action is null and void and it is beyond the scope and power of NIT. The whole action need to be quashed and set aside as NIT grabbed the land free of cost. By order dated 25.08.1992, this Court has granted order of *status quo*. The *status quo* order has been continuing till this date. Respondent no. 1/NIT by their written submission resisted the case on all counts on similar lines along with other petitions and accordingly heard also.

16. In Writ Petition No. 1034/95, the petitioners have challenged the validity of action of respondent no. 2 NIT of allotting open space from Khasra no. 65, Mouja Ajni in favour of respondent no. 3. Respondent no.

2 admittedly entered into an agreement with respondent no. 3 for sanction of the layout on 21.02.1985 and pursuance to the agreement, the petitioner agreed to transfer the open space in favour of respondent no 2. The said land accordingly allotted to respondent no.3. By order dated 07.04.1995, this Court has granted order of *status quo* as the respondents commenced construction on the land/plot. The *status quo* is in force. As the challenge revolves around the identical agreement, therefore, the petitioners have challenged the same; being without jurisdiction Authority and contrary to the Act and; therefore, the whole action is null and void. The respondents, by their reply resisted the same.

17. In Writ Petition No. 1512/2000, the petitioner has challenged the action of respondent based upon the agreement dated 9/7/1979 executed between the petitioner and the respondent NIT. The petitioner Society is a Housing Society registered under the Maharashtra Cooperative Societies Act. The Society has developed various layouts and flat schemes for its members. In one of its layout at Deendayal Nagar, Nagpur, the Society intended to use its public utility land for construction of hostel of working women or for adult education activity and accordingly asked for necessary permission from respondents. However,

respondent vide notification dated 31/3/2000 and corrigendum dated 7/4/2000 is seeking to acquire the said public utility land in the layout of the petitioner society for allotment to some other trusts/societies for being used for public utility, denying the claim of the petitioner. The petitioner has also challenged excess reservation sought to be made for public utility purpose in the land of the Society. Hence, this petition. The common submissions are raised along with the other petitions based upon the similar clauses and agreements in question.

18. In Writ Petition No. 1136/93 the petitioner has challenged the action of respondent based upon the agreement dated 11/3/1970 in question, executed between the petitioner and respondent NIT. The petitioner Society was formed and registered under Maharashtra Cooperative Societies Act vide registration No. NGP/HSG/202. The object of the Society is to provide houses/Flats to its Members. On 17/9/1966, in furtherance of the object of the Society, the Society purchased land in S.No.90/3 admeasuring 11.84 acres in village Ajni, P.H.No.9 from Shri S.S.Mahajan of Nagpur. On 20/9/1962, the vendor Shri S.S. Mahajan had already obtained permission from S.D.O., Nagpur for converting this land for non-agricultural use. On 16/1/1969 the land

in question came within the purview of Ajni Street Scheme of Respondent No.1 and sanctioned by State Government. On 11/3/1970, an Agreement was executed between the petitioner society and the N.I.T. for sanction of layout as the land came under the control of Respondent no.1 because of sanctioned Street Scheme. Thereafter layout was sanctioned. On 13/2/1993, respondent no.1 issued a notice asking the petitioner Society to demolish the structure constructed on public utility plot marked A in Site Plan, which was constructed for library. Similar notice was being issued on 15/12/1990 also which was replied by petitioner society on 27/12/1990. In March, 1993, NIT demolished the structure marked 'A' in the site plan. Hence this petition, challenging the action of respondent no.1 of selling/leasing out the plot to respondent no.2, on similar grounds.

19. In Writ Petition No. 2322/92, the petitioner has challenged the action of respondent based upon the agreement dated 20/8/1973 in question executed between the petitioner and respondent NIT. As per petitioner, on 19/10/1954, the petitioner and Mr. Patil purchased an agricultural field by a registered sale deed from its original owner. On 2/1/1964, the said field diverted to non-agricultural use by the

permission of the S.D.O. Nagpur. On 20/8/1973, the agreement was executed between the petitioner Shri Patil and respondent no.2. On 23/2/1984, respondent no.2 published an advertisement in news paper 'Lokmat' invited the offers from the public for allotting the said public utility land. On 16/3/1985, the petitioner wrote a letter to Executive Officer, NIT Nagpur regarding the advertisement. On 4/10/1992, respondent no.2 and 3 again issued a letter to petitioner asking to handover the possession. The petitioner replied to the letter dated 4/10/1992. On 4/9/1992, respondent no.4 has informed the circle Engineer - II that it is holding possession of the public utility and open land. Hence, this petition on identical grounds with other writ petitions.

20. In Writ Petition No. 822/99, the petitioner Cooperative Housing Society has challenged the action of respondent no.1 NIT of allotting a plot in favour of respondent No. 2 pursuant to an agreement dated 27/01/1970 between petitioner and NIT. The petitioner is the Cooperative Housing Society registered under the Maharashtra Cooperative Societies Act, 1960 having its registration No. 1265, working since last 38 years. The petitioner had developed four lay outs in Nagpur City. All these layouts are approved and sanctioned by the NIT. The

petitioner had purchased agricultural land vide Sale Deed dated 14/06/1968 having Khasra No. 130 of Mouza Parsodi. The land is admeasuring 10 acres. Respondent No.1 had sanctioned and developed the layout. The copy of the sanctioned plan is at Annexure 'B'. While sanctioning the plan, respondent No.1 left open place reserved for Primary School, and an open area. Respondent No. 1 also entered into an agreement in question of development with petitioner on 27/01/1970. Since last 29 years, the open land is in possession of the petitioner Society, being absolute owner by virtue of the Sale Deed dated 14/06/1968. All of a sudden without responding to the earlier correspondence the open land owned by the petitioner allotted to respondent No. 2 without the consent of the petitioner. The petitioner, therefore, immediately sent a letter on 14/12/1998 and legal notice through counsel on 20/12/1998, but there is no reply from respondent No.1. The main challenge of the petitioner revolve around Clause 10 of the Agreement and action arising out of the same claiming it to be illegal, arbitrary, malafide and bad in law, void ab-initio and further it is contrary to the guidelines of the Government of Maharashtra dated 10.06.1996.

21. In Writ Petition No. 1070/2000, petitioner-Cooperative Housing

Society has challenged the decision and action of NIT of taking action pursuance to agreement dated 10.03.1970 between petitioner and NIT claiming allotment of the plot to the exclusion of other Education Society. The petitioner adopted all the grounds and arguments made in Writ Petition No. 934 of 1994 Friends Cooperative Housing Society Vs. Nagpur Improvement Trust and 3 Others.

22. In Writ Petition No. 5145/07, the petitioner has challenged the action of respondent no.2 NIT in refusing to allot the public utility land belonging to the petitioner society to the society itself and instead allotting it to respondent no.4 society. On 23.8.1965 the petitioner society had purchased land admeasuring 9.38 acres of Khasra No.22 of Mouza Khamla from its original owner by a sale-deed. On 30.3.1966 the diversion of the said land to non-agricultural use was permitted by Sub-Divisional Officer, Nagpur.

23. The layout plan for development of the land was sanctioned by Respondent no.2 and an agreement was entered into between the petitioner society and NIT. As per the agreement the petitioner has reserved 10% of the total land admeasuring about 14941.60 sq. ft. for

public utility purpose and transferred the same to NIT free of cost. On 18.6.1982 the petitioner had applied for re-allotment of the land and on making such application NIT had vide its communication dated 18.6.1982 demanded an amount of Rs.22,413/- @ Rs.1.50 per sq. ft. from the petitioner and the said amount was deposited by the petitioner. On 15.11.1990 the NIT published an advertisement for allotment of the Public Utility Land and out of the total public utility land a portion of land was allotted to one Nagarjun Medical Trust. On 14.6.1996 the petitioner had preferred a Writ Petition No. 539/1994 challenging the said allotment. However, this Court vide order dated 14.6.1996 refused to entertain the petition. On 15.3.1999 & 30.1.2000 the NIT published an advertisement in the newspaper for allotment of remaining portion of public utility land. On 19.4.2000 the petitioner society made an application for allotment of the remaining portion of public utility land. On 19.4.2005 the petitioner issued a legal notice to the respondents for allotment of the remaining portion of land to the petitioner society. The petitioner made number of representations to the respondents regarding allotment of the land. However, the respondent NIT did not consider the request of the petitioner and allotted the said land to some other society. The petitioner therefore, made an application to NIT on 17.7.2007 under

the Right to Information Act. N.I.T. vide its letter dated 8.8.2007 informed that the remaining portion of land admeasuring about 961.58 sq. mtrs. Has been allotted to one Sneh Mahila Vikas Sanstha. The petitioner has, therefore, challenged this action of the respondent Trust by way of this petition.

24. Respondent No.2 NIT resisted the petition by its reply dated 12.12.2007. Respondent no.4 has also opposed the petition on various grounds. The parties have filed their Written Submissions also.

25. In view of this, principally following interlinked points arise for consideration :-

- a) Whether the clause contained in the agreement entered into between the various petitioners and NIT by which the petitioners have voluntarily agreed to surrender a portion of their land from the layout to NIT free of cost for being used for public purpose is unenforceable, void being unconscionable, grossly unequal in bargaining power and opposed to public policy ?No.
- b) Whether anything including the decision reported in **AIR 1995 SC 470** (Pt. Chaitram's case) precludes NIT from receiving and allotting the

land voluntarily surrendered by the petitioners without paying any monetary compensation and valid transfer of the land in view of the binding agreements/undertakings in the facts and circumstances of the case ?No.

c) Is the alleged clause and contract void and, therefore, needs any declaration to that effect ?No.

d) Is the contract void for want of consideration/registration ?No.

e) Whether the principles of law of limitation, delay, laches, waiver and other equitable principles apply to the present Writ Petitions ? ...Yes.

f) Is NIT legally entitled to allot/lease out the said land to public institutions or public trusts by following the process of law ?Yes.

g) Whether the petitioners have first or exclusive right to allotment of the land in question ?No.

The common reasons :-

26. Writ Petition No. 5145/07 is not maintainable in view of the decision in Writ Petition No. 539/94 which was between the same parties. While dismissing the earlier Writ Petition, this Court has observed as under :-

“(A) As per initial agreement with the Nagpur

Improvement Trust on 5.2.1971 vide Clause 9, it was specifically agreed by the petitioners society to hand over the public utility plot in favour of the Nagpur Improvement Trust free of cost. The validity of the said clause has not been challenged at the relevant time. (Emphasis supplied),

(B) Sometime in 1982, the petitioner applied for re-allotment of the said plot and offered certain price. However, the same was not finally materialized. This was also not challenged.”

It is clear that the earlier Writ Petition was dismissed on the ground of delay and laches. There was no challenge to the validity of Clause 9 of the agreement between the petitioner and NIT in question, at the relevant time. The said judgment has attained finality and, therefore, binds the parties. The contention now raised and reagitated in the present petition is impermissible. **(Gorie Gouri Naidu (Minor) and another .vs. Thandrothu Bodemma & others : (1997) 2 SCC 552).** The Writ Petition is liable to be rejected also for the reasons given below.

27. All the points are interlinked and interconnected, therefore following common reasons :-

The clause in the agreement is not unenforceable, void, unconscionable, unequal and opposed to public policy :-

The relevant clause 8/9/10 of the respective agreement (for short “the clause”), identical in all the agreements, is reproduced as under:-

“(9) The party no.2 shall reserve in the layout the percent of the total land or more as may be required, and transfer the same to the party no.1 free of cost, and duly developed, for public utility purpose and for such other purpose the party no.1 may determine, and such lands according to its rules and regulations.”

The above quite similar clause is under challenge in all the writ petitions.

28. The relevant Sections 23 & 25 of the Contract Act read as under:-

“Section 23 : What consideration and objects are lawful, and what not :- The consideration or object of an agreement is lawful, unless ----

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or

involves or implies, injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

“Section 25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law – An agreement made without consideration is void, unless--

- 1) it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other; or unless,

- 2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do or unless,
- 3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Explanation 1.-- Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made,

Explanation 2.-- An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.”

29. The Clause 16 of the agreement (in Writ Petition No. 934/94):-

“16. It is hereby agreed between the parties hereto that in the event of breach on the part of party no.2 of any of themes expressed herein or his failure to comply with any of the terms expressed herein mentioned the party no.1 will not grant permission for constructing the buildings or any plot(s) in this layout or in any part thereof.”

30. The material Sections and Scheme of the Nagpur Improvement Trust Act (the “NIT Act”) are :-

“Section 58 : Power to purchase or lease land by agreement:

The Trust may enter into an agreement with any person for the acquisition, by purchase, lease or exchange by the Trust from such person, of any land within the area comprised in a sanctioned scheme.”

“Section 68 : Abandonment of acquisition in consideration of special payment :

1)Wherever in any area comprised in any improvement scheme under this Act the State Government has sanctioned the acquisition of land which is subsequently discovered to be

unnecessary for the execution of the scheme, the owner of the land, or any person having an interest therein may make an application to the Trust (requesting that the acquisition of the land not required for the purposes of the scheme should be abandoned on his executing an agreement to observe conditions specified by the Trust in respect of the development of the property and to pay a charge to be calculated in accordance with sub-section (2) of section 69 of the Act.

2) The Trust shall admit every such application if it --

- a) reaches it before the time fixed by the Deputy Commissioner under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and
- b) is made by any person who has an interest in the land or holds a lease thereof, with an unexpired period of seven years,

3) On the admission by the Trust of any such application, it shall forthwith inform the Deputy Commissioner, and the Deputy Commissioner shall thereupon stay for a period of three months all further proceedings for the acquisition of the

land, and the Trust shall proceed to fix the conditions on which the acquisition of the land may be abandoned.

4) When an agreement has been executed in pursuance of subsection (1) in respect of any land the proceedings for the acquisition of the land shall be deemed to be abandoned,

5) The provisions contained in sections 70, 71, 72, 73 and 74 relating to the assessment, interest, recovery and payment of betterment charge and civil suits shall apply *mutatis mutandis* to the assessment, interest, recovery and payment of abandonment charge and civil suits in respect thereof.”

“S. 45. Notification of sanction of improvement scheme and other regarding vesting of property in Trust :-

1) Whenever the State Government sanctions an improvement scheme, it --

a) shall announce the fact by notification and, except in the case of a deferred street scheme, development scheme, or future expansion or improvement scheme, the Trust shall forthwith proceed to execute the same,

b) may order that any street, square, park, open space or

other land, or any part thereof, which is the property of the Government and managed by the Central Government or the State Government shall, subject to such conditions as it may impose, vest in the trust for the purpose of the scheme.

2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.”

31. NIT is created by the State Government for the improvement of the city of Nagpur through its various improvement schemes. Section 26 of the NIT Act empowers the Trust to frame various schemes. Section 39 provides that such schemes framed by the NIT are required to be published by notification. Section 39 is equivalent to Section 4 of the Land Acquisition Act. The provisions of Sections 40, 41, 42, 43 & 44 further clarify that the improvement schemes are sanctioned by the Government by notification issued under Section 45 of the NIT Act which is equivalent to Section 6 of the Land Acquisition Act. The alteration/improvement to the scheme is permissible under Section 46 of the NIT Act. NIT, therefore, has jurisdiction over the areas/lands

which fall within the sanctioned improvement schemes being part and parcel of notification under Section 6 which is equivalent to Section 45 of the NIT Act. Having once sanctioned the scheme by Government, the NIT need to implement the said scheme as per the mandate of Section 45 of the NIT Act. NIT thereafter can proceed to implement the scheme by acquiring the entire land and further can use the said land for the purpose of scheme. The Trust is further entitled to utilise/dispose of the remaining land as per its Land Disposal Rules (for short “the NIT Rules”). Section 76 of the NIT Act permits NIT to dispose of the land. Section 76 reads as under :-

“76. Power to dispose of land :- Subject to Rules made by the State Government under this Act, the Trust may retain or may let on hire, lease, sale, exchange or otherwise dispose of any land vested in or acquired by it under this Act.”

It is clear that Section 58 of NIT Act empowers/authorises the Trust to enter into an agreement with any person for the acquisition, by purchase, lease or exchange by the Trust from such person of land within the area comprised in a sanctioned scheme.

32. In totality, the Act provides and permits NIT to enter into an

agreement with any person. The petitioner society and/or individual person have accordingly knowing fully the scheme of NIT and purpose and object of the same voluntarily without any influence and/or misrepresentation of any kind by NIT, approached NIT and voluntarily entered into the commercial transaction/agreement in question. The application was moved/filed for sanction of the private layout. The said private layout was sanctioned and the petitioner society/person in view of the agreed terms acted upon and enjoyed all the benefits including selling of the plots to its respective members. The said plot owners/members individually applied for obtaining sanction knowing fully the terms and conditions of those clauses. The subsequent purchasers/members also understood the said clauses and obtained the individual sanctions. The respective members/individual members have further utilised the said plots/layouts and constructed the buildings/flats and enjoyed all the benefits in view of the said agreement and sanction of the private layout by NIT.

33. There is nothing on record to justify their challenge now to the said agreements and basically the Clause. The petitioners are admittedly not challenging the whole agreement. The petitioners have admittedly

acted upon and have been enjoying the benefits pursuant to the said agreement till this date.

34. We have noted that there is no specific pleading as to how the contract or the clause in the contract is void at the instance of the petitioners, who entered into such commercial contract with full knowledge of those clauses/conditions and factually acted upon the same till the date. Therefore, in the absence of pleading, material and proof, such plea is unacceptable. **(State of Kerala & another .vs. M.A. Mathai (2007) 10 SCC 195)** and **Union of India .vs. Surjit Singh Atwal (1979) 1 SCC 520.**

35. The present contract, unless set aside or declared to be void by the Court, is binding especially to the parties who voluntarily entered into such contracts acted upon and enjoyed all the benefits. **Sultan Sadik .vs. Sanjay Raj Subba and others (2004) 2 SCC 377, Velamuri Venkata Sivaprasad (Dead), By Lrs. .vs. Kothuri Venkateswarlu, (Dead) By Lrs. and others (2000) 2 SCC 139, Tayyabbhai, Mohammedbhai Bagasarwalla and another 1997(2) Mh.L.J. 1.**

36. Such terms and conditions, therefore, in no way can be said to

be unconscionable and void terms in contract as submitted based upon Central Inland Water Transport Corporation Limited .vs. Brojonath Ganguly reported in (1986) 3 SCC 156 & LIC of India and another .vs. Consumer Education and Research Centre and others reported in (1995) 5 SCC 482. This can never be said to be an unconscionable bargain as noted, the terms and conditions have been settled over the years which are formed by consent with the persons having commercial interest and accordingly, it has been widely adopted and utilised by people at large. The terms and conditions, therefore, cannot be said to be unfair and unreasonable, especially when the parties bargaining powers and authority throughout was not one sided and/or unequal.

37. There is no substance in argument that there was gross inequality of bargaining power. In view of above, reliance as placed on Premsingh and others .vs. Birbal and others (2006) 5 SCC 353, Yamunabai Anatrao Adhav .vs. Anantrao Shivraj Adhav (1988) 1 SCC 530 that there is no need of a decree to set aside such document as Clause 9/8 is void ab initio, especially when the agreement as well as clause in question are clear and there is no ambiguity at any point of time. The nature of transaction in the background read with the

surrounding and attending circumstances and especially when the document/agreement in question is a commercial document, in no way said to be unclear or with any infirmity or ambiguity (State Bank of India and another .vs. Mulla Sahakari Sakhar Karkhana Limited (2006) 6 SCC 293, Sappani Mohammad Mohideen .vs. R.V. Sethusubramania Pillai (1974) 1 SCC 615.

38. The terms and conditions in questions are binding between the parties. (**Bihar State Electricity Board, Patna and others .vs. M/s. Green Rubber Industries and others : AIR 1990 SC 699**). They have already acted upon those terms and conditions. Therefore, the entire agreement need to be respected in totality. There is no question of reading and/or severing any unequal clause in isolation or in parts. The party to an agreement cannot be allowed to approbate and reprobate as expressed by the Supreme Court in the case of **Harshad Kumar Natwarlal Dalal and others (1981) 1 SCC 538**. Paragraph 48 is reproduced below :-

“48. It is a fundamental principle of general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to

adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is *qui approbat non reprobat* (one who approves cannot reprobate). This principle, though originally borrowed from Scots Law, is now firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction (Per Scrutton, L.J., *Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co.*; see *Douglas Menzies v. Umphelby*; see also Stroud's Judicial Dictionary, Vol. I, page 169, 3rd Edn.).

The Apex Court has further reiterated the principle of approve and reprobate and dismissed the matter on that count also. (**Kashmir Singh .vs. Union of India and other; (2008) 7 SCC 259**).

39. In the case of **Prem Singh and others .vs. Birbal and others (2006) 5 SCC 353**, the Supreme Court has held that with respect to both void, as well as voidable transactions, the action has to be brought

within the period of limitation. We cannot overlook the fact that in the present case, the petitioner has invoked Article 226 & 227 of the Constitution of India and raised these challenges after more than 11 years. Therefore, the facet of the period of limitation though not strictly applicable to writ jurisdiction, still in cases like this the principle of filing of suit for cancellation of such transaction as governed by Article 59 even if any just cannot be overlooked. The relevant Articles of Limitation Act are Article 58 (any declaration) or Article 59 (for cancellation or setting aside of instrument) or Article 113 (residuary clause). Therefore, in all these cases, limitation would not be more than 3 years. The petitions, therefore, suffer from grave delay which is not explained at all. **State of Madhya Pradesh and another .vs. Bhailal Bhai and others** AIR 1964 SC 1006.

40. The Apex Court in State of Madhya Pradesh (supra) has observed in paragraph no.21 as under :-

“21.The learned Judges appear to have failed to notice that the delay in these petitions was more than the delay in the petition made in Bhailal Bhai's case, 1960 M.P.C. 304 out of which Civil Appeal No. 362 of 62 has arisen. On behalf of the respondents-

petitioners in these appeals (C.A. Nos. 861 to 867 of 1962) Mr. Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. We argued that assuming that the remedy of recovery by action in a civil court stood barred on the date these applications were made that would be no reason to refuse relief under Art. 226 of the Constitution. Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these

cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue, that the mistake discovered much later this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter, we are of opinion that the orders for refund made by the High Court in these seven cases cannot be sustained.”

41. The Apex Court in Union of India .vs. Surjit Singh Atwal reported in (1979) 1 SCC 520 refused to allow plea of illegality of the agreement after 13 years even in a civil suit. In the present facts and circumstances, there is no case at all to allow to raise such pleas restricted only to the Clause of the agreement after more than 13 to 20 years. It is not correct submission that no limitation would be applicable in the event the transaction/agreement is void (Prem Singh (supra)). In the present case, the challenge is raised by invoking the writ jurisdiction only to the Clause of the binding agreement. It is not the case like a decree being void or nullity at the inception as a whole. The Apex Court has further clarified in Eastern Coalfields Limited .vs. Dugal Kumar; 2008 (10)

SCALE 449 that the delay or laches on the part of the petitioner can be considered at the time of final hearing also whether relief should be granted in favour of such petitioner or not. Inordinate delay, in the present case, is also an additional factor to refuse to exercise discretion in favour of the petitioner.

42. When the parties entered into agreement, they were fully aware of the nature of transaction, conditions and respective obligations. There was no objection raised at any point of time while entering into such agreement and even thereafter when petitioners and such other persons who based upon the said agreement got the benefit out of the same. We cannot read the clauses in isolation. We have to read the whole agreement in question. It is very clear even from the provisions of the Contract Act that the consideration of any such agreement was permissible and not unlawful and/or not prohibited by law and was not to defeat the provisions of any law or is fraudulent and/or is immoral or opposed to public policy.

43. The submissions, that such contract and especially the Clause is void, in view of provisions contained under Section 23/25 of the

Indian Contract Act being opposed to public policy; violative of fundamental rights of the petitioner; violative of the right of property of petitioner/society; because of unequal bargain power; being forbidden by law and further in view of Section 25 of the Contract Act, as the agreement to transfer is without consideration and the same was not registered, have no force.

44. We have noted that there are no averments of undue influence and/or misrepresentation or any sort of coercion or threat at the time of entering into the agreement in question by the petitioner with NIT. There is no justification whatsoever on record as to why they have not questioned and or challenged the said clause at an earlier stage.

45. There is substance in the argument of respondents/allottees that the doctrine/principle of waiver also applies in cases like this. The petitioners and such other persons took conscious decision to enter into such agreement and bind themselves to the terms and conditions. Therefore, whatever rights even if any they have voluntarily waived and abandoned as there was nothing wrong at the relevant time and even otherwise to enter into such agreement as it was within permissible limits

of both the parties.

46. The doctrine/principle of waiver, while referring to an earlier judgment reported in **1959 Supp 2 SCR 217** (*Waman Shrinivas Keni versus Ratilal Bhagwandas & Company*) has been defined by the Hon'ble Apex Court in Paragraph No.5 in the case of *Diwan Singh .versus. Champat Singh & Ors.*, reported in **1969 (3) SCC 445** as below :

“waiver is the abandonment of a right which normally everybody is at liberty to waive. A waiver is nothing else it amounts to release. It signifies nothing more than an intention not to insist upon the right.”

47. The Apex Court in the case of *Satyanarayan versus Yelloji Rao*, **AIR 1965 Supreme Court, 1405** has explained the said principle in Paragraph No.11, as below :-

“We have used the expression waiver in its legally accepted sense, namely,

“waiver is contractual, and may constitute a cause of action: it is an agreement to release or not to assert a right.”

48. The principle of waiver is based on the maxim of law “*quilibet*

potest renunciare jure pro se introducto” which means, “*an individual may renounce a law made for his special benefit*”. (Reference : **1994 (4) SCC 422**).

49. The Apex Court in **Sikkim Subba Associates vs. State of Sikkim reported in (2001) 5 SCC 629** further elaborated and reiterated the meaning of “waiver” and “consideration” in reference to an agreement with the State in following words by observing that “he who seeks equity must do equity” :-

“Waiver involves a conscious, voluntary and intentional relinquishment or abandonment of a known, existing legal right, advantage, benefit, claim or privilege, which except for such a waiver, the party would have enjoyed. The agreement between the parties in this case is such that its fulfilment depends upon the mutual performance of reciprocal promises constituting the consideration for one another and the reciprocity envisaged and engrafted is such that one party who fails to perform his own reciprocal promise cannot assert a claim for performance of the other party and go to the extent of claiming even damages for non-performance by the

other party.”

In the present case, we have no doubt that there are reciprocal promises/obligations which are required to be performed and/or followed by the parties. Admittedly, the agreement is not one sided. The petitioners have voluntarily entered into contract and already acted upon and now avoiding to perform their part of the obligations by challenging the Clause of the agreement without any basic pleading and prayer. The submission, therefore, that there was no consideration paid or received by the person like the petitioner has no force. The reciprocal obligation, in the facts and circumstances of the case, itself falls within the ambit of the term “consideration” as per the Contract Act. Knowing fully the terms and conditions both the parties have abandoned and waived their various rights and acted upon the said agreement voluntarily; firstly, by surrendering the portion of the land to the Trust voluntarily for public purpose. NIT has released the property from acquisition which was admittedly notified pursuant to Sections 31, 37 & 46 of the NIT Act. There is no dispute that as per Section 45 of the NIT Act, once the land/scheme is notified which is conclusively of duly formed and sanctioned scheme, NIT pursuant to this policy and agreement permitted the person like the petitioner to develop the layouts

and further permitted to be sub-divided into plots. In totality, the object of releasing the property from acquisition and then getting the same portion of land from the land owner. The Trust has been utilising and allotting the said portion of surrendered land for charitable and public purpose. There is nothing to show that the sanctioned scheme and/or lands and layouts are contrary to the development plan. In view of this, there is no force in contention that the agreement and/or clause is void for want of consideration and it is beyond or opposed to public policy.

50. In **Babulal Verma .vs. Surat Municipal Corporation reported in 2008 (3) SCALE 206** : In *Halsbury's Law of England*, Volume 16(2) 4th Edition, para 907, it is stated :-

“The expression 'waiver' may, in law, bear different meanings. The primary meaning has been said to be the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may arise from a party making an election, for example whether or not to exercise a contractual right... Waiver may also be by virtue of equitable

or promissory estoppel; unlike waiver arising from an election, no question arises of any particular knowledge on the part of the person making the representation, and the estoppel may be suspensory only.... Where the waiver is not express, it may be implied from conduct which is inconsistent with the continuance of the right, without the need for writing or for consideration moving from, or detriment to, the party who benefits by the waiver, but mere acts of indulgence will not amount to waiver, nor may a party benefit from the waiver unless he has altered his position in reliance on it.”

In the present case, as we have noted both the parties have altered their position. The petitioners have already got the benefit out of the same. This is a case of express waiver. The legal principle emerging from these decisions is also stated in *Craies on Statute Law* (6th Edn.) at page 369 as follows :-

“As a general rule, the conditions imposed by statutes which authorise legal proceedings are treated as being indispensable to giving the court jurisdiction. But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to

the action themselves, and that no public interests are involved, such conditions will not be considered as indispensable, and either party may waive them without affecting the jurisdiction of the court.”

Applying the above principles to the present case, it must be held that the benefit of notice provided under the Act and Rules being for the benefit of the Appellant in which no public interests are involved, he has waived the same.”

In the present case also, the petitioners waived the rights based upon the voluntarily agreed terms and conditions of the contract. There is nothing illegal and/or against the public policy if a party agreed to particular terms by abandoning or waiving his rights and accordingly got the benefits also.

51. A similar conclusion was reached in the case of *Krishna Bahadur v. Purna Theatre* [(2004) 8 SCC 229], and the principle has been stated far more precisely, in the following words :

“9. The principle of waiver although is akin to the principle of estoppel; the difference between the two, however, is that whereas estoppel is not a case of action; it is a rule of

evidence; waiver is contractual and may constitute a cause of action; it is an agreement between the parties and a party fully knowing of its rights has agreed not to assert a right for a consideration.

10. A right can be waived by the party for whose benefit certain requirements or conditions had been provided for by a statute subject to the condition that no public interest is involved therein. Whenever waiver is pleaded it is for the party pleading the same to show that an agreement waiving the right in consideration of some compromise came into being. Statutory right, however, may also be waived by his conduct.”

[See also Bank of India v. O.P. Swarnakar (2003) 2 SCC 721].

52. In totality, therefore, the petitioners through their conduct have waived their rights. The conduct operates against them with respect to ascertaining a right over a portion of the land in question.

53. In this background, it is worth to mention the observations

given by the Apex Court in Babulal (supra) to answer all the basic contentions as raised in the present matter.

“27. We are, however, not unmindful of the fact that a statute of town planning ex facie is not a statute for acquisition of a property. An owner of a plot is asked to part therewith only for providing for better facilities of which he would also be a beneficiary. Every step taken by the State does not involve application of the doctrine of eminent domain.

In this case, the appellant did not oppose the draft scheme. It accepted that the State had a right to do so. Existence of a public purpose and increase in the valuation of the property was admitted. There exists a distinction in the action of the planning authority as regards vesting of a property in it and one so as to enable it to create a third party interest vis-a-vis for the purpose of re-allotment thereof. In the former case, the vesting of the land may be held to be an act of acquisition, whereas in the latter, it would be distribution of certain benefits having regard to the purpose sought to be achieved by a statute involving town planning.

It was on that legal principle, this Court in *State of Gujarat v. Shantilal Mangaldas & others* [1969 (3) SCR 341], opined that when a development is made, the owner of the property gets much more than what would have he got, if the same remained undeveloped in the process as by reason thereof he gets the benefit of living in a developed town having good town planning.”

(emphasis added).

54. In **Ranganayakamma and another v. K.S. Prakash (D) by L.Rs. and others** (JT 2008 (8) SC 510) in reference to Sections 23 & 25 of the Contract Act, 1872 the Apex Court has elaborated the aspect of “consideration” including nominal and inadequate consideration as under:-

“49. Mr. Chandrasekhar, however, has drawn our attention to Anson's Law of Contract, page 154, wherein the law is stated to be as under :-

“.....Some additional factor is required to bring a case within one of the exceptions; for example, the existence of a relationship in which one party is able to take an unfair advantage of the other. In the absence

of some such factor, the general rule applies that the courts will enforce a promise so long as some value for it has been given.”

As regards, nominal and inadequate consideration, the learned Author states :

“Nominal consideration' and 'nominal sum' appear..... as terms of art, to refer to a sum as consideration which can be mentioned as consideration but is not necessarily paid.....”

“50. The same principle might have been applied in the Indian Contract Act, “Consideration” has been defined in Section 2(d) of the Indian Contract Act, which reads as under :-

“(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.”

“51. Consideration even in the Indian context would mean a reasonable equivalent or other valuable benefit passed on by the promisor to the promisee or by the transferor to the transferee. Love and affection is also a consideration within the meaning of Sections 122 and 123 of the Transfer of Property Act.”

55. In Writ Petition No. 3208/89 Pragati Housing Society .vs. Nagpur Improvement Trust, a Division Bench of this Court by order dated 7.2.1990 after considering the similar rival contentions observed as under :

“Having obtained sanction on that basis it is impermissible for the petitioners to go behind the same. There is nothing illegal in the agreement. The property vests by surrender in the Trust for the limited purpose of having a planned development. Under the circumstances, no question of paying compensation by the Trust can arise. Provisions relating to acquisition and payment of compensation (Section 56 of the Nagpur Improvement Trust Act) are not attracted in such surrenders.”

In Writ Petition No. 539/94, another Division Bench of this Court by order dated 14.6.1996 considering the similar agreements and challenge rejected the Writ Petition by observing as under :-

“(A) As per the initial agreement with the Nagpur Improvement Trust on 5.2.1971 vide Clause 9, it was specifically agreed by the petitioner society to hand over the public utility plots in favour of the Nagpur Improvement

Trust free of costs. The validity of the said clause has not been challenged at the relevant time.”

It is worth to mention that this Court in **Writ Petition No. 2978/98** while considering the similar agreement under the Maharashtra Municipality Act, 1965 whereby the person like the petitioners agreed to hand over 10% of the land free of cost to respondent no.1, the Amravati Municipal Corporation and State Corporation to retain possession for public purpose, it was specifically provided that the petitioner shall have no right or ownership on the said land. Another agreement was entered between the parties. The said plot was thereafter allotted to other society like the petitioners and leased out for 30 years on nominal rent. The petitioner thereafter based upon **Pandit Chetram case** raised quite similar points. A Division Bench based upon the agreements rejected the similar contentions in that petition also on the ground of estoppel. The **Civil Appeal Nos. 3389/2000 and 3390/2000 Ganesh Sahakari .vs. Amravati Municipal Corporation** against the said judgment were also dismissed by the Supreme Court by order dated 3.8.2005.

56. We have noted that even otherwise, a surrender of private land

for public purpose and/or acquisition of portion of land for public purpose is not an unknown phenomenon. In **M.C. Mehta .vs. Union of India & others (1996) 4 SCC 351**, the Supreme Court has issued direction that land which would become available on account of shifting and relocation of hazardous industries from the city of Delhi shall be used in the manner as provided for in the said judgment, thereby the land owner was declared to develop a portion of the said land after surrendering and deducting to the Delhi Development Authority, a portion of the land for development of green belts and other places. The land which was required to be surrendered was upto 68%. The Apex Court rejecting the case of landowners for compensation in lieu of surrender of portion of land declined the said compensation on the ground that the FSI permitted to be used on the land retained by the owner was 1.5% of the permissible FSI and hence the same was a consideration for surrendering the land. (**M.C. Mehta .vs. Union of India & others 2000 (5) SCC 525**). The Apex Court in **Bombay Dyeing & Manufacturing Company Limited .vs. Bombay Environmental Action Group and others (2006) 3 SCC 434** has upheld the Clauses of the Development Control Rules, 1958 applicable to Bombay which provide for surrender of the land if the landholder seeks to develop the

remaining land for other purposes as provided under the Rules. The decision as relied in **Vrajlal Jinabhai Patel, since deceased through his L.Rs. Smt. Jagrati Vrajlal Patel and another .vs. State of Maharashtra and others** 2003(3) Mh.L.J. 215 to submit that an ownership in open space under the layout could be vested or transferred to the Municipal Council is not applicable on facts and circumstances as referred above. This is not a case also where there is any question of blocking and encroachment upon the open space and plot or area of the locality. The respondents State and/or NIT are bound to stick to the development plan and scheme as announced. The Apex Court in **Chairman, Indore Vikas Pradhikaran .vs. Pure Industrial Coke & Chemicals Limited and others** (2007) 8 SCC 705 while dealing with the aspect of Town Planning and Articles 300-A, 14 & 17 of the Constitution of India has also observed :

“.....The courts must make an endeavour to strike a balance between the public interest on the one hand and protection of a constitutional right to hold property, on the other. For the aforementioned purpose, an endeavour should be made to find out as to whether the statute takes care of public interest in the matter vis-a-vis the private interest, on

the one hand, and the effect of lapse and/or positive inaction on the part of the State and other planning authorities, on the other.”

NIT or such other local authority need to consider the purpose, scheme, development plan and the circular issued from time to time by striking a balance of public and private interest. The petitioners are bound by the agreement and undertaking as given. In fact, both the parties are bound by the agreements. In totality the permissible action of respondent NIT is within the frame of law and the record. There is no substance in these petitions.

57. Furthermore, factually, the **Clause of the agreement is not void and illegal for want of consideration.** After considering the whole scheme of the NIT Act and especially Sections 29 to 70 & 121 read with the agreement entered into by the parties shows that the said agreement creates reciprocal rights/obligations with following major objects as rightly contended by the learned Counsel appearing for respondents/allottees.

(a) Abandonment of the land from acquisition of NIT,

- (b) Permission to develop the said land and sanction of a scheme of a layout therein,
- (c) Entrustment of the job of supervision of such development on NIT,
- (d) Transfer of the public utility land, reserved in the said layout, to the NIT,
- (e) immediate and reciprocal permission to develop the land by making a layout in the said land and permission to sell plots therein, i.e. permission for commercial exploitation of the land,

58. Thus, seeking abandonment of the land from acquisition proceedings is a major and huge benefit which the petitioner society gained from the agreement.

59. One more benefit which the petitioner derived from this agreement is immediate and reciprocal sanction for development of the land (scheme of layout) and permission for its commercial exploitation, thus averting further loss of time, money and energy, in obtaining such a permission and sanction, presuming that there would be no acquisition.

60. The consideration for the voluntary surrender as recorded

above is also that the land which was under acquisition by NIT for the street scheme has been released from acquisition and permitted to be used for developing the layout by the petitioners. The land has been permitted to be sub-divided into plots. The object of surrendering the land to NIT voluntarily by the petitioners and such other persons in this background is definitely charitable and for public purpose. Apart from this, the petitioners have got all benefits and advantages under the agreement. They have constructed various buildings/flats on the developed plots after forming layouts. The land which they have surrendered, therefore, cannot be said to be free of consideration. In this background, the said surrender cannot be said to be immoral or opposed to public policy. The whole basic object of respondents is also to distribute or allot such surrendered portion of land for public utility, i.e. for public purpose. It is not the case of the petitioner that they need to surrender all developed plots or layouts. It is only portion which they surrendered after getting all the benefits as agreed.

61. The submission of petitioners, as noted above, revolves around the the common Clause of the respective agreements, being unreasonable, irrational, illegal and void ab initio as it is without

consideration and registration. There is no force as already noted above even in this submission, especially when the said Clause has been agreed to be incorporated by the petitioner society on its free consent and voluntarily. The quantum of consideration and/or nature of consideration cannot be permitted to be agitated now in the Writ Petitions. It is the mutual understanding based upon the total terms and conditions of the said agreement. There is no question of any registration in this background of the matter. NIT as per scheme wants to reallocate or lease out for public purpose, these public utility plots. The submission that theory of waiver of right to receive compensation for the said land still results in void agreement is not correct. In this background, the Apex Court decision as relied, in Waman Shrinivas Kini .vs. Ratilal Bhagwandas & Co. 1959 Supp. (2) SCC 217 = AIR 1959 SC 689 is of no assistance. The law and principle of Sections 23 & 25 is not in dispute. The agitation is the applicability of those principles to the facts and circumstances of the present case. There is nothing to justify that the plea of waiver cannot be raised in the present case. There is nothing opposed to public policy in the present case. It is not the case that the whole agreement is against the public policy, but only the clause which is said to be void. The clause as referred above is interconnected and

provides intermixed obligations and conditions, voluntarily entered into by the parties.

62. In Pandit Chet Ram (supra), there was no occasion in that case to consider the agreement like present one whereby the parties themselves already acted upon and enjoyed the benefits. The consideration so got by the petitioners in lieu of so-called compensation is already elaborated and especially when they themselves agreed for the same, that itself distinguishes the facts and circumstances of the present case with that of Pandit Chet Ram.

There was no such voluntary agreement involved in the said matter. The said challenge is raised only by a very few people of the society. Most of them have enjoyed the benefits of the the NIT scheme. NIT pursuant to their scheme instead of acquiring the land sanctioned permitted the petitioners to enjoy the position and utilised the same for their individual members' benefit by keeping their power and authority to allot the already declared public utility plots to the educational institutions and/or public Trusts by following the due procedure of law of advertisement. Such facts were not in the background of Pandit Chetram case. Supreme Court has dealt with sub-section (3) of Section 313 of

Delhi Municipal Corporation Act. Even the case of Pandit Chetram (supra) was considered and the challenge was negated long back by accepting the case of respondents in identically placed facts and circumstances of the case.

63. The same is the case in **Yogendra Pal (supra)**. The facts and circumstances of the said Supreme Court case are also different and distinguishable in view of the reasoning given in view of above paras. Such agreements cannot be said to be violative of fundamental rights of persons like the petitioners and/or opposed to public policy. It is not in breach of any rights as guaranteed under Article 31 and Article 300-A as submitted by the petitioners. The Apex Court's decisions in **Central Inland Water Transport Corporation Ltd. .vs. Brojonath Ganguly (1986) 3 SCC 156** and **LIC of India and another .vs. Consumer Education and Research Centre and others (1995) 5 SCC 482** are, therefore, also of no assistance to the petitioner. The doctrine and principle as laid down is in no dispute. The facts and circumstances of that case and present case makes the position distinct and distinguishable. In Yogendrapal (supra), there was challenge to the provisions of the Punjab Municipal Act. There is no challenge in the

present case at any point of time to the provisions as well as to the scheme as announced by the respondent NIT at relevant time and till this date. The petitioners have in fact agreed voluntarily and enjoyed the benefits and after so many years restricting their challenge only to the Clause of the agreement whereby they are refusing to perform their part of reciprocal obligations which were basic terms and conditions of the consent contract as respondent NIT has already acted upon the said conditions and sanctioned the plot and further layouts upon which respective members and/or even third persons have constructed the building. As noted, the land could have been acquired by NIT but for the policy and the agreement it was permitted to retain with the petitioners on condition of leaving the portion in question for reallotment for the educational or other institutions.

64. The aspect of resolution passed by the petitioners (in W.P. No. 937/93) and others whereby they agreed/resolved to surrender public utility plot pursuant to the said agreement just cannot be overlooked while considering the challenges as raised by the petitioners in the present petition. The petitioners cannot blow hot and cold like this, especially after such long time and in the petitions like this merely

because respondent NIT is also a 'State' falling within the meaning of Article 12 of the Constitution of India.

65. There is force in the submission raised by the respondents that they are estopped from challenging the agreement. The doctrine of estoppel of acquiescence in challenging the only clause 9/8 of the agreement is squarely applicable. The Apex Court in **P.S. Gopinath .vs. State of Kerala & others : 2008(4) SCC 85,** has rejected such petitions/action of person like the petitioner based upon this doctrine itself.

66. There is no dispute that as per the scheme after sanctioning the layout though entire expenses for the development were borne out by the petitioner society or such other person and NIT in return after due advertisement allowed the said public utility plot in the public interest to registered Trust and educational institutions, cannot be said to be beyond the scope and power of NIT Act.

67. The submission that there is nothing mentioned in the agreement about any kind of consideration and it is mentioned

specifically that the land shall be transferred free of cost and, therefore, to reagitate the issue about the interpretation in view of so-called unambiguous terms is clearly impermissible, especially at the instance of parties who admittedly understood and agreed upon the same and in fact acted after enjoying the benefits now reagitating all these questions based upon the facts and evidence in the present Writ Petition is unjust and it is in breach of their terms and conditions and obligations. No equity lies in favour of such persons. The challenge to the contractual obligations, especially when other side is a 'State' though permissible, in a given case, but in the present case, in view of above, it is totally frivolous and impermissible.

68. Admittedly, the agreement was entered into between the society and NIT and not between the individual members/plot owners. Merely because there are no Sections referred in the agreement, that itself cannot be reason that there was no consideration paid and/or the terms and conditions are vague, unclear, unequal and gives unbridled and arbitrary powers to NIT to utilise/use and allot the said utility plots, as per the layout for the other public purposes pursuant to the scheme.

69. The submission that the Clause is severable from the whole

agreement is incorrect. Clause 16 read with Clause 9 and whole agreement only makes the contract valid and binding to the parties, especially when all the parties pursuant to the same agreed and acted upon uninterruptedly knowing fully the provisions of law, the power of NIT and their respective obligations. As noted, Clause 9 of agreement is not severable from the rest of the clauses. All are inter-connected and interlinked and, therefore, the persons like petitioners have enjoyed all the benefits out of the same. The challenge after more than 10 to 15 years to the said Clause by relying on doctrine of '*blue pencil*' or severance is totally impermissible. (Beed District Central Cooperative Bank Limited .vs. State of Maharashtra and others reported in (2006) 8 SCC 514) & Shin Satallite Public Company Limited .vs. Jain Studios Limited reported in (2006) 2 SCC 628 are totally not applicable in the facts and circumstances of the present case. The whole agreement is not challenged and having enjoyed the benefits because at that time the petitioners and such other persons thought it to be valid now cannot invoke the doctrine of severability to the terms by ignoring the terms and the whole agreement. The submission that this Clause/actions are no actions in the eyes of law and do not create any right or obligation in the parties and, therefore, severable is not correct and impermissible. We are

of the view that there is no ambiguity in the clause of the agreement. All clauses are clear. The background, the intention of the parties at the relevant time and surrounding circumstances apart from the conduct of the parties is sufficient to reject this contention. Reliance on **State of India and another .vs. Mulla Sahakari Sakhar Karkhana Limited (2006) 6 SCC 293** and **Sappani Mohammad Mohideen .vs. R.V. Sethusubramania Pillai (1974) 1 SCC 615** are of no assistance because of distinguishable facts and circumstances.

70. The petitioner even now has gone to the extent of saying after enjoying the whole fruit of the said agreement that the society has no title in the said P.U. Plots and the plot holders have undivided shares and, therefore, the resolution passed by the society was also without any authority and is of no consequence to surrender the said land by the society as it would be without authority. This itself shows the whole conduct of the petitioner and its members. It is difficult to accept such pleas as agitated in the present matter at the instance of such petitioners. Therefore, the self-destructive submissions against the doctrine of waiver, estoppel, constructive res judicata, approbation and reprobation without any pleading and material on record, go against the petitioners and/or such other person in all respects.

71. In this background, the advertisement and the allotment so made in favour of respondents/allottees cannot be said to be irregular and/or without authority. The respondent NIT needs to take steps in accordance with the law to allot the plots after advertisement as per their declared scheme and only to the eligible persons for the public utility as announced. The petitioners have no first or exclusive right as claimed. The person in breach of such agreement is not entitled for any equitable relief. The action of respondents, therefore, is legal and within the

authority to advertise and allot the plots in favour of allottee respondents or such other public Trusts or such institutions.

72. NIT, right from its inception, has disposed of the public utility land in the layouts of NIT from time to time. It is further submitted that near about 99.9% of the allottees have accepted and acted upon the agreement and accordingly, NIT has allotted the lands to the allottees adhering to the Rules. The petitioners themselves had filed an application for allotment of the public utility lands to them and as they are not qualified as per the Land Disposal Rules, they have approached this Court in seeking the declaration that the lands should be allotted to them. The petitioners have not challenged any clause or any rule of the Rules. It is submitted that the allotment is being made strictly in consonance to the Rules. NIT after giving an advertisement, invites applications from the charitable or educational institutions as per the terms and conditions of the advertisement. Those applications are scrutinized and the Board of the Nagpur Improvement Trust recommends the allotment to be made in favour of the prospective allottees. The said recommendations have been got approved from the Government in view of Rule 20 of the Rules and on approval of the Government, the said

allotment has been made. Therefore, there cannot be any fault, which can be found out with the allotment being made in favour of the allottees, who have applied in consonance to the advertisement and fulfilled the terms and conditions of the agreement. NIT has allotted the public utility land to following institutions; which are : Maharashtra Rashtrabhasha Sabha, Nagpur, Hostel for Women, South Indian Educational Society, Deaf and Dumb's School, Indian Medical Association, Institutions like Nagrik Sahakari Rugnalaya, Kusumtai Wankhede Hall, Shri Guru Raghvendra Swami Bhajan Mandal, Maharana Pratap Smuruti Mandir Sanstha, Matru Sewa Sangh, Shashkiya Chitrakala Mahavidyalaya, Chaitanya International Hospital, L.A.D. College, Vidarbha Bridge Association, Kalakunj, Yogabhayasi Mandal, Rani Laxmibai Jhansichi Smarak Samiti, Bhagwad Pad Sabha, Bhratru Mandal, Yogabhasi Mandal, Karnatak Sangh, Ved Dharma Shastra Papipalan Sabha, Satchikitsa Prasarak Mandal, Mahila Sewa Samaj, Nagendra Digambar Jain Samaj, Khaire Kumbhi Samaj, Sewadal Education Society, Shri Sant Tukaram Gyan Mandir, Nagpur Houses of Mary Immanulate, Bhartiya Bhasha Dnyan Mandir, Dr. Hedgewar Smarak Samiti, Sant Gulab Baba Sewa Ashram, Gayatri Parivar Trust, Keshanagar Sanskrutik Mandir, Stree Shikshan Prasarak Mandal,

Printers Guild, Manav Uttam Sewa Samiti, Eastern Sports Club, Punjab Sewa Samaj, Shri Radhakrishna Charitable Trust, Shioprasad Poddar Charitable Trust, Shri Charottar Patidar Samaj, Mathadi Hamal and Area Transport Works Union, Nagpur General Works Union, Parampujya Parmatma Ek Sewak Mandal, Steel and Hardware Chamber of Commerce, Nag Vidarbha Chamber of Commerce, Lohana Mahajan Samaj, Hariyana Nagrik Sangh, Vidarbha Dal Miller Association, Sugar Vachanalaya, Mrugwa Swami Vyayam Shala, Nagpur Gujarathi Kewalani Mandal, Indian Red Cross Society, Gurunanak Sindhi Hindi Vidya Samiti, Shri Chokhamela Samaj Girl's High School, Sikh Education Society, Bhartiya Boudha Mahasabha, Nagpur Bidi Majdoor Sangh, Gondwana Vikas Mandal, Bharat Sewak Samaj/Cancer Relief Society, Nagpur Nagar Akhada Sanghtan Samiti, Employees State Insurance Corporation, Indian Cancer Relief Society, Bhartiya Boudhajan Mahasabha. It is not the case in the facts and circumstances of the case that the respondent NIT by this policy and scheme has unjustly enriched itself. The whole action is in the interest of public at large.

73. The reliance on Supreme Court judgments; that alternative remedy is no bar (Assistant Collector of Central Excise .vs. Jaison

Hosiery Industries (1979) 4 SCC 22, Popcorn Entertainment and another .vs. SIDCO and another 2007(9) SCC 593 and Whirlpool Corporation .vs. Registrar of Trademarks, Mumbai and others (1998) 8 SCC 1) and; Writ Petition in the sphere of contracts though needed detailed investigation, High Court may exercise jurisdiction under Article 226; Hindustan Petroleum Corporation Ltd. and another .vs. Dolly Das (1994) 4 SCC 450 and Himmatlal .vs. State of M.P. AIR 1954 SC 403 would also not assist the petitioner to support his case for the relief as claimed in the facts and circumstances of the case itself.

74. The additional vague challenge is about the validity of Rule 20 of the Land Disposal Rules of NIT. Considering the scheme and purpose of NIT Act and in view of the above reasons given, there is no substance in this challenge also. The same is within the framework of law. For the above reasons, the G.R. dated 10.6.1996 as relied in Writ Petition No. 1353/99 is also of no assistance to the petitioners which only provides further instruction how to deal with the situations based upon the prior agreements as in some cases the persons like the petitioners have not handed over the possession physically and obtained interim orders of protections from various Courts and in the result, there are status-quo in

operation in many cases.

75. For the above reason also, the points as raised and submitted by the petitioners have no force and accordingly rejected. The respondent NIT is free to allot the land by following due procedure of law for public purpose as announced. There is no arbitrariness or any illegality in doing so.

76. Therefore, taking all into consideration, the points (a), (b), (c), (d), (g) are answered in the negative and the points (e) & (f) in positive.

77. In view of the above reasons, all the Writ Petition Nos. 934/94, 967/92, 1179/93, 3085/93, 1784/92, 1034/95, 1512/2000, 1136/93, 2322/92, 822/99, 1070/2000 & 5145/07 are dismissed. Interim order so granted also stands vacated. No order as to costs.

78. At this stage, learned Counsel appearing for the petitioners seek stay of present judgment basically for the reason that till this date the writ petitions are pending and the undertakings and interim orders so granted have been in force since more than 15 years. In the circumstances, therefore, the effect and operation of the judgment is stayed for eight

weeks.

JUDGE.

J.

JUDGE.