Ramesh Chandra Sharma vs The State Of Uttar Pradesh on 20 February, 2023

Author: Krishna Murari

Bench: S. Ravindra Bhat, Krishna Murari

REPORTABLE

IN THE SUPREME Court OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8819 OF 2022
(arising out of S.L.P (C) No.11447/2018)

Ramesh Chandra Sharma & Ors. … APPELLANT(S)

VERSUS

State of Uttar Pradesh & Ors. … RESPONDENT(S)

With

CIVIL APPEAL NO. 8820 OF 2022
(arising out of S.L.P (C) No. 21323/2018)

Anoop Singh (Dead) Thr. Lr(s). & Ors. … APPELLANT(S)

VERSUS

State of Uttar Pradesh & Ors. … RESPONDENT(S)

With

CIVIL APPEAL NO. 8821 OF 2022
(arising out of S.L.P (C) No. 2256/2019)

Jageshwar Singh @ Jage (Dead) Thr. Lr(s). & Anr. … APPELLANT(S)

VERSUS

State of Uttar Pradesh & Ors. … RESPONDENT(S)

JUDGMENT

KRISHNA MURARI, J.

1. These appeals are directed against the judgment and order dated 30.03.2018 passed by a Full Bench of the High Court of Judicature at Allahabad (hereinafter referred to as 'the High Court'), The reference to Full Bench came to be made under the following circumstances: -

1.1 Writ Petition No. 61449 of 2009, Smt. Madhuri Srivasatava Vs. State of U.P. & Ors.1 along with other connected petitions were filed by certain landholders whose land was acquired by NOIDA challenging the decision of the Board of Directors of NOIDA dated 07.01.1998 as also the approval granted to the said resolution by the State Government dated 02.03.2009 whereby a distinction was carved out in the matter of payment of compensation by creating a classification between "Pushtaini" and "Gair-pushtaini" landholders. The 'Pushtaini' landholders whose lands were acquired, were given additional compensation @ Rs.3 per sq. yard along with 15% as rehabilitation bonus on the compensation already awarded, as also the 10% area of the acquired land, whereas those who were declared as 'Gair-pusht xcaini' were denied this additional benefit. A Division Bench of the High Court vide Judgment and order dated 10.05.2016 dismissed the Writ Petition holding the classification to be reasonable having direct nexus with the object sought to be achieved i.e., rehabilitation of the original residents who are likely to become landless due to the acquisition of their land.

2. Another bunch of Writ Petitions were filed by the present appellants challenging a similar classification made by the Greater Noida Authority 1 (2016) 6 SCC OnLine AII 2832 (hereinafter referred to as 'G Noida') in payment of compensation on the basis of the landholder being 'Pushtaini' and 'Gair-Pushtaini'.

3. While considering the Writ Petitions, another Division Bench disagreed with the views expressed in the case of Smt. Madhuri (Supra) and vide order dated 07.07.2017 referred the matter to be decided by a larger Bench.

4. The Full Bench constituted in pursuance to the reference framed the following questions for adjudication :-

(i) Whether the law laid down by a Division Bench of this Court in the case of Smt. Madhuri Srivastava reported in (2016) 6 ADJ 1 is in conflict to the law laid down by the Supreme Court in the case of Nagpur Improvement Trust and Another Vs. Vithal Rao and Ors. 2 and also with the provisions of the Land Acquisition Act, 1894?

(ii) Whether the classification made under the U.P. Land Acquisition (determination of compensation and declaration of award by agreement) Rules, 1997, the distinction made among 'Pushtaini' and 'Gair-Pushtaini' farmers, is a classification having reasonable nexus with the object sought to be achieved?

5. Vide impugned judgment and order dated 30.03.2018, the Full Bench answered question No. 1 in negative and question No. 2 in affirmative and upheld the view taken by the Division Bench in the case of Smt. Madhuri Srivastava (Supra). As a consequence of the answers to the questions framed, 2 (1973) 1 SCC 500 the Full Bench held that nothing remains to be decided in the Writ Petitions filed by the present appellants and the same were dismissed.

6. Before we enter into the factual matrix of the case, we find it expedient to first trace out the etymology of the words "Pushtaini" and "Gair Pushtaini" used in the impugned classification, for language, once adopted inside the realm of law, materializes itself a much more powerful being, one which must be understood in the right historical context.

7. The word 'Pushtaini' is a Persian word and finds its origin from the word 'Pusht', which means 'back'. The said word has been historically used in the context of ancestry. Any possession, tale or legend, that has roots to a particular ancestry, to denote it's significance to the said ancestry, the word 'Pushtaini' is used. As is obvious, since the word 'Gair' which finds its origin in Urdu language means 'other than', thus, 'Gair-Pushtaini' would mean one which is not 'Pushtaini'.

8. What we find most interesting however, is that ancestry as a concept, especially before times of modern private property ownership, had remained to be a tool for inclusivity and not exclusion. In such a context, the use of the word "Pushtaini" by the Authority, to exclude compensation might be a historically inaccurate interpretation. While this is not consequential to the merits of the case, it is in our opinion a worthwhile observation, for law has to power to legitimize the meaning of words and can change the context in which a word used, and in turn can change the course of history itself.

Background Facts

9. Since the early 1970s, Liberalization took over India by storm, and it brought with it the promise of massive economic growth. A huge amount of money was infused in the Indian Economy with the purpose of developing Indian cities into massive global hubs of capital and business. In line with this, Delhi began its journey of becoming a global city. This influx of capital into the city also brought with it massive employment opportunities, and people from all over the country started migrating to Delhi. To contain such influx of migrants and ensure dignified living for all who came to the city with the hopes of improving their lives, the government of India planned to develop residential and industrial areas around the capital. For this, Gurgaon was developed across the border of Haryana, and New Okhla Industrial Development Authority (NOIDA) was developed by the Uttar Pradesh Government in the adjoining district of Gautam Budh Nagar. In this period, the city enjoyed massive growth, both in terms of influx of capital and migration. This growth was so unprecedented, that it even exceeded the planning estimates as envisaged by the authorities. As a measure to accommodate such growth, the Uttar Pradesh Government, exercising its powers under Section 3 of the U.P. Industrial Area Development Act, 1976, by notification dated 28.01.1991 created the township of Greater Noida, in an area of 38000 hectare, comprising of 124 villages of Gautam Budh Nagar.

10. For its planned development, the Respondent- G. Noida started acquisition of land within its territorial area of operation under the provisions of Land Acquisition Act (hereinafter referred to as '1894 Act'). In the same connection, notifications dated 03.10.2005 and 05.01.2006 were issued under Sections 4(1) and Section 6(1) of 1894 Act for acquisition of total area of 580.1734 hectares of the land for plan development situate in different villages falling within the jurisdiction of G. Noida. The said notifications, which also included the land of the present appellants, were subject matter of challenge before the High Court in a bunch of Writ Petitions challenging the acquisition proceedings mainly on the ground of arbitrarily invoking urgency clause under Sections 17(1) read with Section 17 (4) of the 1894 Act. The bunch of the said Writ Petitions came to be decided by the another Full Bench of the High Court titled as Gajraj Vs. State of U.P3. The High Court concluded that the urgency clause was wrongly invoked, but saved the acquisition for the reason that much development had already taken place over the said land and the nature of land stands completely changed. The Full Bench further in order to compensate the landholders directed an additional compensation to be paid to the landholders at the rate of 64.70% of the already paid compensation and a further direction was issued to allot developed Abadi land to the extent of 10% of their acquired land, subject to a cap of Rs.2,500/- square meter. The Full Bench never made any distinction between 'Pushtaini' and 'Gair-Pushtaini' farmers for payment of the additional compensation or allotment of land. The Full Bench also relying upon the decisions rendered in the case of Radheyshyam (Dead) through L.Rs & Ors. Vs. State Of UP & Ors. 4, Greater Noida Industrial Development Authority Vs. Devendra Kumar & Ors. 5, further held that merely because the farmers had received compensation under an agreement, it cannot be said that they have waived off the right to challenge the same. The Full Bench judgment in Gajraj (Supra) came to be affirmed by this Court in Savitri Devi Vs. State of U.P. & Ors.6 3 (2011) SCC OnLine AII 1711 4 (2011) 5 SCC 553 5 (2011) 12 SCC 375 6 (2015) 7 SCC 21

11. The present appellants had also filed a Writ Petition being Writ Petition No. 62056 of 2011 challenged the notification issued under Sections 4 and 6 read with Section 17 of the Act. The said Writ Petition came to be disposed of in terms of the directions issued by the Full Bench in the case of Gajraj (Supra) vide judgment and order dated 01.11.2011.

12. It is also pertinent to mention at this stage that even before the land acquisition proceedings were initiated and notification under Sections 4 and 6 of the 1894 Act, were issued, the Respondent-Greater Noida in its 26 th Board meeting dated 28.10.1997 decided to classify the landholders for the purposes of payment of compensation for acquisition of their land as 'Pushtaini', namely, those landholders who had purchased the land prior to the date of establishment of authority i.e., 28.01.1991 or thereafter got the land by partition or family settlement and 'Gair-Pushtaini' being those persons who purchased the land after its establishment. Thus, two classes of landholders were carved out for payment of compensation and those who were classified as 'Pushtaini' landholders, a higher amount of compensation was decided to be awarded to them in the name of their rehabilitation.

13. Subsequently, on 15.07.2006, an agreement was entered into between Greater Noida and the appellants and other landholders under Rule 4(2) of the Land Acquisition Rules, 1997 (hereinafter referred to as '1997 Rules') and in accordance with the resolution passed by Greater Noida in its 26

th Meeting, the 'Pushtaini' landholders were paid compensation @ Rs. 322 per sq. yard and the 'Gair-Pushtaini' landholders including the appellants herein were paid a lesser amount of compensation @ Rs.280 per sq. yard.

14. The landholders continued with their agitation making demand of further compensation at the enhanced rate which resulted in constituting a Committee to consider the demand of enhanced rate of compensation in the form of bonus/ex-gratia compensation. The Committee submitted its report after making a recommendation for payment of the amount @ Rs.310 per square metre on account of Ex-gratia to the Ancestral Agriculturists of the land situate in 8 Villages.

15. The report of the Committee dated 25.10.2008 is being reproduced hereunder for a ready reference :-

" ANNEXURE P-4

25.10.2008

Recommendation of the Committee constituted in connection with making consideration on the demands of bonus/ex- gratia/compensation enhancement at the enhanced rate in connection with the land of Village Ghodi Bachheda and other Villages as per Order No.4/4/1/2008 -C.X. (1) Lucknow dated 4.09.2008 of the Government of Uttar Pradesh Following Committee has been constituted in connection with making consideration on these types of demands and bonus / ex-gratia /compensation enhancement at the enhanced rate in connection with the land of Village Ghodi Bachheda and other Villages vide Order No.4/4/1/2008 C.X. (1) Lucknow dated 4.09.2008 of the Government of Uttar Pradesh:-

1. Shri Thakur Jaibir Singh, Hon'ble Minister, Rural Engineering Service, Agricultural Foreign Trade and Agriculture Export Chairman

2. Chief Executive Officer, Greater Noida - Member

3. District Magistrate, Gautam Buddh Nagar - Member Coordinator Examined and perused the records made available in evidence of the Memos submitted by the representatives of agriculture is organizations / Agriculturists and perused the background of the and its different aspects by the Committee and while convening Committee Meeting of the Committee of Villages / their representatives, even consideration was made in respect of the above matter, particulars of which is given below:-

1. Background- this decision was taken in the 26th meeting dated 28.10.1997 of the Greater Noida Authority Board that the rate of compensation be assessed on the basis of agreement by the Authority for each financial year and those Agriculturists, who are agreed for executing the consent at the rates of the questioned Financial Years, they while executing the agreement/consent, may receive compensation under contract/consent regulation and those Agriculturists, who are not agreed with the prescribed rate, the compensation will be payable to them at the rate prescribed by

> the learned District Magistrate under provisions of Section 23 of the Land Acquisition Act 1994. On the basis of above sequence, for the year of 1997-98, the rate of compensation was assessed @ Rs.110 per square and in future, it will be enhanced in accordance with cost inflation index in each financial year. Vide Order No.902/778 3-0 7-1 43 N/04. of the Government of Uttar Pradesh, a High Level Committee under Chairmanship of the Commissioner, Meerut Division, Meerut was constituted. Committee has recommended its compensation value @ Rs.800-850 per square metre, in sequence thereto, in the meeting of Greater Noida Authority Board held on 5.01.2008, while assessing the compensation @ Rs.850 per square metre, decision was taken to enforce this rate with effect from 1.04.2007.

Even the particulars of these types of Memos are also mentioned in the recommendation dated 4.01.2008 of the Committee constituted under chairmanship of the Commissioner, Meerut Division, Meerut vide Order dated 31.12.2007 of the Government issued previously, whereby it is clear that at that time also, The Villagers of the above Villages were making demand for enhancement in compensation. The certain Memos of the Villagers were forwarded to the Government for appropriate guidelines/directions while enclosing them as per Authority letter No.931 / land-record / L.P./2008 dated 7.03.2008/ 903/ land-record /LP/2008 dated 10.03.2008, Land Record/1 a/2008 dated 13.03.20081038/land-record/L.A./2008 dated 29.04.2008, 1055/ land-record/ LA / 2008 dated 5.05.2008/ 1069/land-record/ LA/2008 dated 9.05.2008, 1113, 1115/land- record/L A/2008 dated 06.06.08. Thereafter, by Order dated 10.05.2008 of the Chairman and Chief Executive Officer, Greater Noida, for examination of the demand of compensation enhancement raised by the Agriculturists, a Committee of District Magistrate, Gautam Buddha Nagar, Chief Executive Officer, Deputy Chief Executive Officer, Greater Noida was constituted and in its report dated 21.07.2008, recommendation was made to make consideration for additional amount @ Rs. 175 -200 square metre to the Agriculturists of the land acquired in the Financial Years 2006-2007 of the Village Ghodi Bachheda including other Villages. Such directions were given while making perusal of the Recommendation of the Committee in the 72nd Meeting dated 11.08.2008 of the Authority Board, that while making calculation of the situation of its financial source and its management, the case be referred to the Government. Vide Order No.4/4/1/2008 -C.X. (1) Lucknow dated 4.09.2008 of the Government of Uttar Pradesh, the above Committee was constituted for giving recommendation in connection with making consideration on the demands of bonus / ex-gratia/enhancement of compensation and etc. at the enhanced rate in connection with the Village Ghodi Bachheda and other Villages.

2. Meetings of the Committee - That first meeting of the Committee was convened on 15.09.2008 in the conference room of Uttar Pradesh Sadan, New Delhi, in addition to the Chairman of Committee, following officers have taken part-

1. Shri Pankaj Agarwal, Chief Executive Officer, Greater Noida

2. Shri Shravan Kumar Sharma, District officer, Gautam Buddha Nagar In addition to above, following officers of the Greater Noida Authority were appeared in the above meeting-

1. Shri Shailendra Chaudhary, Deputy Chief Executive Officer, Greater Noida.

2. Shri Shishir, Special Executive Officer, Greater Noida Consideration and consultation was made in connection with the work area, operation and process of the constitution of the Committee in the meeting land this decision was taken that while convening a meeting with the Agriculturists and their representatives affected with the acquisition, their opinions and demands may be known by way of receiving representations from them and discussion may be made from them in this regard.

In sequence of above, the meeting of Committee was convened on 22.09.2008 and 11.10.2008 respectively in the Conference Room of the Greater Noida Authority, wherein, while receiving the memo from the Agriculturists of Village and their representatives, the matter was discussed and consulted in detail, wherein, mainly, following people have taken part-

1. Ramesh Singh Rawal,

2. Yogendra Singh Rawal,

3. Subedar Ramchandra,

4. Omprakash,

5. Mahi Singh Bhati,

6. Lokesh Bhati,

7. Maha Singh Bhati,

8. Pratap Singh Bhati,

9. Pratap Singh Sarpanch,

10. Prem Mukhiya,

11. Inder Singh (Advocate),

12. Ajit Singh Nagar,

13. Kamal Bhati,

14. Mange Ram Bharti

15. Bhule Singh,

16. Rakesh

17. Braham Singh,

18. Atmender,

19. Maharaj Singh,

20. Mehndi Hassan,

21. Umesh,

22. Vikram Singh,

23. Satbir Pradhan,

24. Naresh Upadhyay,

25. Ajith Mukhiya,

26. Rampal Havaldar,

27. Nemvir, Pradhan, Garba and etc. etc.

3. Grounds of the demand and memo submitted by the Agriculturist - There records were received in support of detailed Memos and particulars in connection with the demands from the Villages in their meeting by the Committee. The agriculturist of the land acquired in the year of 2006- 2007 of Village Ghodi Bachheda and including other Villages have collectively produced detailed and factual Memos including necessary records before the Committee and even grounds were also raised by the Agriculturists orally in support of their demand, wherein, main grounds are included, which are as under:-

> 1. The farmers of questioned Villages have given value enhancement Memo on 2.04.2006, whereon, the Greater Noida Development Authority gave Assurance letter in written on 5.01.2007 after 10 days, that, after calling the rates of Tronica City and etc. in the GDA, till the last week of the February 2007, decision will be taken in connection with enhancing the compensation. In support of their statements copy of letter dated 5.01.2007 of the Deputy Chief Executive Officer, Greater Noida addressed to Ashok Pradhan, respected member, Lok Sabha and Sri Nawab Singh Nagar, is enclosed.
>
> 2. They had also revealed their demand in connection with compensation enhancement in the meeting of committee constituted under chairmanship of the Commissioner, Meerut Division, Meerut, but nothing benefit has been given to the Agriculturists of the acquired land in the financial year 2006- 2007.

3. The Villagers have produced their demand, while disclosing detailed grounds before the Committee constituted under chairmanship of the learned District Magistrate vide Order dated 10.06.2008 of the Chairman and Chief Executive Officer, Greater Noida but, even then, the Committee, without making intensive consideration thereon, has given recommendation for enhancement @ Rs. 175- 200 per square metre, which is not in practical and it is against the principle of natural justice and that this enhancement is insufficient.

4. Analysis - The Notification was issued on 5.01.2006 under Section 6/17 of the Land Acquisition Act, 1894 in the proposal of acquisition of 580.1730 hectare land of Village Gonda Bachheda and that the possession of the acquired land was handed over to the Greater Noida Authority on 14.05.2006 by the Additional Collector (L A). After approving the value of compensation @ Rs.385 per square metre on 28.06.2006 from the Divisional Commissioner, Meerut, the compensation amount was distributed @ Rs.385 per square metre to the Ancestral Agriculturists and @ Rs.334.78 per square metre to the ancestral Agriculturists. That the land of the following Villages were acquired for well-planned development of the Greater Noida in the Financial Years 2006-2007 including Village Gonda, Bachada and other Villages and that the possession of the above land was taken after 01.04.2006 and the Agriculturists of the above land are making demand for enhancement of compensation.

S.No. Name of Village acquired area date of transferring (in heatare) possession of the land to the Authority

1. Surajpur 69330 01.06.2006

2. Ajaybpur 37308 01.06.2006

3. Garbara 595830 01.06.2006

4. Gondi Basera 580.1730 14.06.2006

5. Shani 299.5660 30.10.2006

6. Dadha 215.6010 27.10.2006

7. Mathurapur 122.2699 27.10.2006

8. Daabra 111.8868 31.01.2007 Agriculturist organization, Agriculturists of these Villagers have also given a number of Memos for demanding enhancement of compensation at the time of constitution of the Committee under chairmanship of the Divisional Commissioner, Meerut vide Order dated 31.12.2007 of the Government and even prior to it.

The copy of consent letter dated 5.01.2007 signed by the then Deputy Chief Executive Officer, Greater Noida and consideration and consultation made on the Memos submitted on 5.01.2007 in the matter by the Villagers with Member of Parliament Shri Ashok Pradhan and the then MLA Shri Nawab Singh Nagar was also provided to the agriculturists, wherein, it is mentioned that this decision has been taken in connection with enhancing the compensation of the acquired land that after calling the rates of compensation of the land being acquired by the Ghaziabad Development Authority and the land of Tronica City of Housing Development Board, till the last week of February, decision will be taken in connection with enhancing the compensation. It is clear by it that the Agriculturists were raising demand of enhancing the compensation even in the month of February 2007, whereon, the Assurance was given at the Competent Level of Authority.

The Committee constituted under chairmanship of the learned District Magistrate has revealed the facts in detail in its report dated 31.07.2008 on the above overall points raised by the Agriculturists. The Committee has perused the recommendation dated 21.07.2008 of the Committee constituted under the chairmanship of the learned District Magistrate, Gautam Buddha Nagar. Such finding has been concluded in its report dated 21.07.2008 that it is not possible to make any change in the rate of compensation in accordance with law, because of receiving the compensation after fulfillment of the agreement under the Agreement Regulation after acquisition of the land by the concerned Agriculturists, but, the Committee has recommended in its report dated 21.07.2008 to award certain amount in the detailed circumstances on account of ex-gratia.

5. Recommendation - As per the information provided by the Special Executive Officer (L A), Greater Noida, most of the Agriculturist of the acquired land in the financial year 2006 2007 of Village Ghodi Bachheda, including other Villages, as per the Government Order dated 29.09.2001, under the provisions of Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997, have received Compensation. Therefore, it would not be possible under the rule to make any enhancement/ change in the compensation rates of the award to be declared. Accordingly, it would be appropriated only to give additional amount on account of Ex gratia to be awarded as relief to the Agriculturists of these Villages. In the report dated 21.07.2008 of the Committee constituted under the chairmanship of the learned District Magistrate, recommendation has been given to award additional amount @ Rs.175-200 per square metre. But, in opinion of the Committee, there is justification to make partial enhancement in above amount.

Therefore, in view of the above detailed factual analysis, consultation, discussion, consideration made from the Agriculturists and assurance given at the level of Authority, this Committee is hereby made recommendation to make payment of the amount @ Rs.310 per square metre on account of Ex gratia to the ancestral Agriculturists of the questioned land of 8 Villages detailed in Para No.4 possession of which has been received in the financial year 2006-2007 and the Committee is hereby further recommended to submit the recommendation before the Greater Noida Authority Board for necessary proceedings.

Sd/-, Shravan Kumar Sharma, District Magistrate, Gautam Buddha Nagar Sd/-

(Pankaj Agarwal), Chief Executive Officer, Greater Noida Sd/-

(Thakur Jaiveer Singh), Hon'ble Minister Rural Engineering Service Agriculture Foreign Trade and Agriculture Export, Uttar Pradesh"

16. Based on the aforesaid report, a decision was taken in the 74 th Board Meeting of Greater Noida for payment of additional compensation/ex-gratia @ Rs.310 per square metre only to the 'Pushtaini' farmers of 8 villages.

17. The Minutes of the 74th Board Meeting of the Greater Noida Authority dated 03.11.2008 are being reproduced hereunder :-

" ANNEXURE P-5 S. No.1 - For approval of minutes of 74th Board Meeting of the authority 74th Board meeting of Authority was held on 03.11.2008. Minutes of this meeting (enclosure), has been sent to the members of authority vide semi Government letter No.UMC/ 74th Board Meeting/ 2008 / 265 dated 3.11.2008. Minutes of the above meeting is being submitted herewith for approval of the Authority Board.

S.No. 9- In connection with demand of bonus/ex-

gratia/compensation enhancement of the Agriculturists of the land of Village Ghodi Bachheda and Other Villagers acquired in the Financial Year 2006 2007 by Greater Noida The Agriculturists of the land of following Villagers, whose land was acquired in the financial year 2006 -2007 by the Greater Noida, have submitted a lots of Memos, while making demand of compensation enhancement-

S.No.	Name of Village	acquired area (in heatare)	date of transferring possession of the land to the Authority
1.	Surajpur	69330	01.06.2006
2.	Ajaybpur	37308	01.06.2006
3.	Garbara	595830	01.06.2006
4.	Gondi Basera	580.1730	14.06.2006
5.	Shani	299.5660	30.10.2006
6.	Dadha	215.6010	27.10.2006
7.	Mathurapur	122.2699	27.10.2006
8.	Daabra	111.8868	31.01.2007

Which have been submitted to the Government from time to time for appropriate directions and guidelines. For examination of the demand of compensation and management of Agriculturist, following a Committee of District Magistrate, Gautam Buddha Nagar, Additional Chief Executive Officer, Deputy Chief Executive Officer, Greater Noida was constituted vide Order dated 10.06.2008 of the Chairman, Greater Noida, and the above committee has recommended to make consideration on awarding additional amount @ Rs.175- 200 per square metre to the cultivators, whose land was acquired in the financial year 2006, 2007, in Village Ghodi Bachheda including other Villages, in its report dated 21.07.2008. In the 72nd meeting of the Board held on 11.08.2008, while using the Recommendation of the Committee, this direction was given that, while making calculation of the

situation of the financial sources and its management, the matter may be referred to the Government, as per Government Order No.4/4/1/2008 - C.X. (1) Lucknow dated 4.09.2008 of the Government of Uttar Pradesh, the committee was constituted in connection with making consideration on the demands of the Agriculturists in connection with bonus / Ex gratia / compensation enhancement of the enhanced rates in connection with the land of Village Ghodi Bachheda and other Villages.

1. Sri Thakur Jaiveer Singh Hon'ble Minister, Rural Engineering Service, Agriculture Foreign Trade and Agriculture export -Chairman

2. Chief Executive Officer, Greater Noida member

3. District Magistrate, Gautam Buddha Nagar -Member Coordinator The committee has submitted its recommendation on 25.10.2008, wherein, the recommendation has been made to make payment on account of ex-gratia @ Rs.310 square metre to the ancestral agricultural of the land whose possession has been received in the Financial Year 2006-2007 of 1.04.2006 by the Greater Noida in respect of the land of Village Ghodi Bachheda and recommendation has been made to submit the matter with recommendation of the Committee before the Greater Noida Authority Board for necessary proceedings. The report dated 25.10.2008 of the Committee is enclosed and that it is a part of agenda.

Overall Compensation Amount of Rs.5522134695.00 (Rupees Five Arab fifty two crores twenty one lakhs thirty four thousand six hundred ninety five only), calculated @ Rs.385 per square metre. applied at that time against the land measuring 1434.3207 of the above Villages acquired in the financial year 2006-2007, has already been sent to the learned Additional District Magistrate (L.A.). And as per letter No.527/8 -VK BHL a dated 23.06.2008 received from the land acquisition officer, the amount of Rs.5,27,56,68,568 (Five Arab Twenty seven crores, fifty six lakhs sixty eight thousand five hundred sixty eight only), which is 95.54%, has already been distributed among the concerned Agriculturists. As per the information received vide letter No.833/Eight- A.D.O. (L A) /08 dated 21.10.2008 of the Additional Collector (L.A.), out of the questioned acquired land of the above Villages, the area measuring 1392.9586 hectare, is ancestral area. So, in case of making payment at the enhanced rates to the ancestral Agriculturist, that is, on making payment @ Rs.310 per square metre as recommended by the Committee, then, their shall financial burden of Rs.4318171660 (Rupees four Arab twenty one crores eighty one lakhs seventy one thousand six hundred and sixty only).

The report of the Committee is submitted for consideration of the Authority Board."

18. Vide order dated 15.01.2009, the State Government granted its approval for payment of enhanced compensation/ex-gratia/bonus to the 'Pushtaini' landholders.

19. For the sake of convenience, the break-up of compensation granted to both the categories of landowners is being produced hereunder :-

Dates	Rate	Of Rate	Of Difference in

		Compensation for Pushtaini Landowners	Compensation for Gair-pushtaini Landowners	Compensation
28.10.1997 (GNOIDA) making categories compensation & July-Sept. 2006 (Agreement between landowners and GNOIDA)	2	Rs. 322/- per sq. yard, as agreed between the parties for the parties.	Rs. 280 per sq. yard, as agreed between the parties	Rs. 42/- per sq. yard,
15.01.2009 (Letter Secretary payment)		Further payment of Rs. 259.27 per sq. yd. as ex gratia payment for Pushtaini farmers.	No payment for Gair-pushtaini land owners	ex-gratia Rs. 301.27 per sq. yard.
21.10.2011 (GAJRAJ High Court Judgment) & 02.11.2011 (G NOIDA treated ex gratia payment made to the Pushtaini Land Owners as Additional Compensation,		Rs. 957.36 per sq. yard	Rs. 461.16 per sq. yard	Rs. 496.20 per sq. yard

ARGUMENTS ADVANCED BY THE APPELLANTS

20. The learned Counsel for the Appellants Contended that:-

I. Section 23 of the Land Acquisition Act does not allow for a discrimination between Pushtaini and Gair-pushtaini landowners in determination of compensation under the Land Acquisition Act.

I. In light of the law laid down by this Court in the Nagpur Improvement Trust Case (Supra), no distinction between the abovementioned two sets of classes of landowners can be made on the basis of the date of purchase of the land and the date of establishment of G NOIDA. The Ld. Counsel argued that all the landowners whose land was acquired should stand on the same pedestal.

II. The Land of both the classes of landowners have been acquired under the same procedure, for the same public purpose and having the same market value, and hence, any difference in the rate of compensation provided to any party is highly discriminatory and is violative of Article 14.

III. Further, it has also been argued that merely by signing the agreement, the Appellants herein cannot be said to have waived their right to Appeal the compensation, especially since the fact that the ex-gratia payment granted to the Pushtaini landowners was awarded after the agreement was signed.

IV. It has also been contended that the ex-gratia payment as a form of compensation does not exist in the Land Acquisition Act, and can only be interpreted as one of the reasons for payment within Section 23 of the Land Acquisition Act, and in such a scenario, the payment must be universally made to all parties.

ARGUMENTS ADVANCED BY THE RESPONDENTS

21. The Ld. Counsel for the Respondents Contended that:

I. The UP Land Acquisition Rules have been formed under the Land Acquisition Act,1894. These rules prescribe for method of compensation between the acquirer and the acquiree through an agreement. The Appellants, by way of an agreement, voluntarily accepted the compensation being granted to them. Further, while accepting the compensation, the Appellants herein also submitted an Affidavit stating that the compensation is agreed upon and accepted by the parties. It was only three years later that the Appellants decided to file a writ challenging the compensation, after entering into the agreement and explicitly agreeing to the compensation amount.

II. The Appellants had entered into an agreement as per the law of the land and had accepted the compensation granted to them. In such a scenario, there exists no legal remedy of the Appellants to re-open the agreement on grounds of a subsequent increase in compensation to a different party.

There is no remedy to re-open the agreement by way of approaching the Court in the statue.

III. The distinction created between the two classes of land owners has been done on the basis of their residence. The base compensation given to both the classes is the same, and only an additional 15% extra amount is given to Pushtaini landowners as rehabilitation bonus, which is not a necessity for the Gair-pushtaini landowners as they do not reside in the concerned land and are not sons of the soil.

IV. As regards to the ex-gratia payment given to the Pushtaini landowners, the same is merely an additional compensation based on the classification between sons of the soils and mere investors in the land.

The payment is based on reasonable classification and is not violative of Article 14.

Issues

22. In the aftermath of the aforesaid litigations in the High Court, the following three questions arise for adjudication in these Appeals :-

I. Whether the Appellants, by signing the agreement,have waived their right to seek for revised compensation?

II. Whether the classification made under the Land Acquisition Act, and the UP Land Acquisition Rules,1997 between Pushtaini Landowners and Gair-pushtaini Landowners for the payment of compensation at different rates is liable to be struck down as violative of Article 14 of the Constitution?

III. Whether the classification made by the Full-Bench of the High Court between Pushtaini landowners and Gair-pushtaini landowners is in contravention to the law laid down by this Hon'ble Court in the case of Nagpur Improvement Trust and Another vs. Vithal Rao and Others (1973) 1 SCC 500?

23. We have heard, Shri Pradeep Kant, Learned Senior Counsel for the appellants, Shri. Ravindra Kumar, learned Senior Counsel appearing for the Greater Noida and Shri Ravindra Kumar Raizada, learned counsel for the State of U.P./A.A.G., at great length.

24. At the outset, we would like to clarify that in the present appeals, we are only concerned with the legality and validity of action of G. Noida paying an enhanced compensation to the landholders by carving out an artificial class of 'Pushtaini' landholders from among the same class of landholders whose land was acquired by the same notification for the same purpose. There is no challenge to the validity of the acquisition itself as the same stands finally settled by this Court.

Analysis Whether the Appellants are bound by the compensation as per the agreement under the Land Acquisition rules, and have waived off their right to seek enhanced compensation?

25. It has been vehemently submitted on behalf of Greater Noida that the appellants herein did not exhaust their remedy under Section 18 of the Land Acquisition Act and approach the High Court, and has sidestepped a procedural requirement. Section 18 of the 1894 Act reads as under :-

> "Reference to Court.- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.
>
> (2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,
>
> (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
>
> (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

26. The first and foremost thing to be taken note of is that the nature of the challenge in the Writ Petition filed by the appellants before the High Court was based on violation of Article 14, which is a fundamental right enshrined in the Constitution. Such a challenge, irrespective of the existence of any alternative remedy under a statute cannot put a bar on the jurisdiction of the Constitutional Courts.

27. The Respondent Authority argued that since the agreement was consented to, no challenge could exist in the Court. This argument in the facts of the case, has been raised only to be rejected. The issue involved in adjudication is not in respect of an agreement entered into by the appellants.

Similar agreements were also entered into with the Authority by such identically situated landholders who have been granted additional compensation subsequent to the agreement by carving out a distinction on the basis of period of residence/occupation of the land which was acquired by creating an artificial classification of 'Pushtaini' and 'Gair-Pushtaini' landholders.

28. Furthermore, since the issue of additional compensation by making an artificial classification of 'pushtaini' and 'Gair-pushtani' was not in existence at the time of the agreement, there was no occasion to challenge the same.

29. Further, specifically in the context of the grant of ex-gratia payment, it is to be noted that the said payment granted to Pushtaini landowners through a separate notification, was assessed, and given, after the agreement was signed by both, Pushtaini and Gair-pushtaini Landowners. The Appellants herein, under those circumstances, could not have challenged the agreement vis a vis the ex-

gratia payment on grounds of violation of Article 14, when no such violation existed at the time of the agreement. No man can be expected to predict a future violation of their rights and file a pre-emptive appeal. This Court is reminded of the words of Francis Bacon, who in the 17 th century wrote about the link between legal certainty and justice:

> "For if the trumpet give an uncertain sound, who shall prepare himself to the battle? So if the law give an uncertain sound, who shall prepare to obey it? It ought therefore to warn before it strikes... Let there be no authority to shed blood; nor let sentence be pronounced in any Court upon cases, except according to a known and certain law Nor should a man be deprived of his life, who did not first know that he was risking it.' (Quoted in Coquillette, Francis Bacon pp 244 and 248, from Aphorism 8 and Aphorism 39? A Treatise on Universal Justice)."

30. On the basis of the above-mentioned reasons, we are of the considered opinion that the Appellants, because of their signing of the agreement, have not forfeited their right to seek revised compensation, because ,the cause of action accrued to them much after entering into the agreement. The issue no. 1 is answered accordingly in the negative and in favour of the Appellants.

Whether the classification made by and executive fiat between Pushtaini Landowners and Gair-pushtaini Landowners for payment of compensation at different rates is liable to be struck down as violative of Article 14 of the Constitution?

31. The High Court, while upholding the classification between 'Pushtaini' and 'Gair-pushtaini' landowners, stated that there is no discrimination being caused to similarly situated parties, and the judgment rendered by the Division Bench in the case of Smt. Madhuri Srivastava (Supra) lays down the correct law. Thus, the Full Bench upheld the classification and negated the challenge made to the said classification. The relevant paragraphs of the impugned judgment are reproduced hereunder :-

> "Before coming on merits of the case, it would be appropriate to state that sovereign power of state to acquire private property for public purpose is based upon maxim "salus populi est suprema lax" means welfare of the public is paramount law and maxim "necessita publica major est quam privata" means public necessity is greater than private. The maxim "eminent domain" (sabai bhumi Govind Ki) means state is supreme owner of the land. Constitution of India incorporates these maxims. Acquisition of private property can be made by legislation, exercising powers under Articles 245 and 246 of the Constitution. Subject "acquisition and requisition of property for the purposes of the Union" was mentioned as Entry No. 33 of List-I and "acquisition and requisition of property except for the purposes of the Union" was mentioned as Entry No. 36 of List-II of the Seventh Schedule of Constitution. By Section 26 of Constitution (Seventh Amendment) Act, 1956, Entry No. 33 of List-I and Entry No. 36 of List-II were deleted and Entry No. 42 of List-III of Seventh Schedule of the Constitution was amended as "acquisition and requisition of property". Acquisition of private parties can be made by exercise of executive power under Article 298 of Constitution. Union of India and State Governments can acquire

private property, exercising legislative or executive powers.

While dealing with an issue pertaining to classification and its reasonability, we must also keep in mind that the governance is not a simple thing. It encounters and deals with the problems which come from persons in an infinite variety of relations. Classification is the recognition of those relations, and, in making it a wide latitude of discretion and judgment must be given.

Having considered all aspects of the matter by keeping in mind the Constitutional provisions discussed above and also the intent of the Act, 1894 especially the provisions of Sections 23 and 24 of the Act, 1894, we are of considered opinion that the classification introduced among the Pushtaini and Gair-pushtaini farmers is reasonable with intelligible differentia and that in no manner causes any discrimination among the similarly situated person. The law laid down in the case of Smt. Madhuri Srivastava (supra) has taken adequate care of all these provisions while concluding that the Pushtaini and Gairpushtaini farmers are two different classes and the resolution to award additional compensation on different rates is not at all discriminatory."

32. To assess the validity of the impugned classification, we must put it through the rigours of Article 14 and see whether it survives the baptism. It is a well established principle of law, that the state, as per Article 14, cannot deny equality before law and equal protection of the law.

REASONABLE CLASSIFICATION TEST

33. For any classification to survive the test of Article 14, the classification must be based on intelligible differentia, and it must have a rational nexus to the object sought to be achieved by the law. At this stage, it is important to note that the object sought to be achieved must also be lawful, and if the object of the law itself is found to be discriminatory, then such discrimination must be struck down. This has been held in a catena of judgments.

34. The reasonable classification test was first introduced to Indian Jurisprudence in the case of State Of West Bengal Vs. Anwar Ali Sarkar7 . The issue raised therein was against the Bengal Special Courts Act which was enacted for the purpose of speedier trial of certain offences. This Act was challenged on the touchstone of Article 14 on grounds of the Act giving arbitrary powers to the state government. The Court, while dismissing the appeal of the state held that:-

> 7 (1952) AIR 75 "It can be taken to be well settled that the principle underlying the guarantee in Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances [Charanjit Lal Chowdhury v. Union of India, 1950 SCR 869 : 1950 SCC 833] . It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed [Old Dearborn Distributing Co. v. Seagram Distillers Corpn., 81 L Ed 109 : 299 US 183 (1936) : 1936 SCC OnLine US SC 145] . Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subjectmatter of the legislation

> their position is substantially the same. This brings in the question of classification. As there is no infringement of the equal protection rule, if the law deals alike with all of a certain class, the legislature has the undoubted right of classifying persons and placing those whose conditions are substantially similar under the same rule of law, while applying different rules to persons differently situated. It is said that the entire problem under the equal protection clause is one of classification or of drawing lines [Dowling : Cases on Constitutional Law, 4th Edn. 1139.]. In making the classification the legislature cannot certainly be expected to provide "abstract symmetry". It can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even "degrees of evil" [Skinner v. Oklahoma, 86 L Ed 1655 : 316 US 535 at p. 540 (1942) : 1942 SCC OnLine US SC 125] , but the classification should never be arbitrary, artificial or evasive. It must rest always upon real and substantial distinction bearing a reasonable and just relation to the thing in respect to which the classification is made; and classification made without any reasonable basis should be regarded as invalid [Southern Railway Co. v.

Greene, 54 L Ed 536 : 216 US 400 at p. 412 (1910) : 1910 SCC OnLine US SC 59] . These propositions have not been controverted before us and it is not disputed also on behalf of the respondents that the presumption is always in favour of the constitutionality of an enactment and the burden is upon him who attacks it, to show that there has been transgression of constitutional principles.

I am not at all impressed by the argument of the learned Attorney General that to enable the respondents to invoke the protection of Article 14 of the Constitution it has got to be shown that the legislation complained of is a piece of "hostile" legislation. The expressions "discriminatory" and "hostile" are found to be used by American Judges often simultaneously and almost as synonymous expressions in connection with discussions on the equal protection clause. If a legislation is discriminatory and discriminates one person or class of persons against others similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as "hostile" in the sense that it affects injuriously the interests of that person or class. Of course, if one's interests are not at all affected by a particular piece of legislation, he may have no right to complain. But if it is established that the person complaining has been discriminated against as a result of legislation and denied equal privileges with others occupying the same position, I do not think that it is incumbent upon him, before he can claim relief on the basis of his fundamental rights, to assert and prove that in making the law, the legislature was actuated by a hostile or inimical intention against a particular person or class. For the same reason I cannot agree with the learned Attorney General that in cases like these, we should enquire as to what was the dominant intention of the legislature in enacting the law and that the operation of Article 14 would be excluded if it is proved that the legislature had no intention to discriminate, though discrimination was the necessary consequence of the Act. When discrimination is alleged against officials in carrying out the law, a question of intention may be material in ascertaining whether the officer acted mala fide or not [Sunday Lake Iron Co. v. Wakefield, 62 L Ed 1154 : 247 US 350 (1918) : 1918 SCC OnLine US SC 148] ; but no question of intention can arise when discrimination follows or arises on the express terms of the law itself ."

35. In the case of Rustom Cavasjee Cooper (Banks Nationalisation) v.

Union of India8, R.C.Cooper, who was the director of Central Bank of India filed a petition against the Union of India challenging the provisions of The Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1969. The Court while deciding this case held that it cannot overlook the violation of fundamental rights of the citizens on mere technicalities. It then further went on to state that the Courts won't look into the objects of the impugned act and rather they will look into the effect of the impugned act. The Court found the said Act in clear violation of Article 14 since only 14 banks were restrained from conducting banking business in the future while other banks including foreign banks were allowed to continue Banking in India. It has been observed in the said case as under :-

> "By article 14 of the Constitution the State is enjoined not to deny to any person equality before the law or the equal protection of the laws within the territory of India. The Article forbids class legislation, but not reasonable classification in making laws. The test of permissible classification under an Act lies in two cumulative conditions: (1) classification under the Act must be founded on an intelligible differentia distinguishing persons, transactions or things grouped together from others left out of the group; (ii) the differential has a rational relation to the object sought to be achieved by the Act: there must be a nexus between the basis of classification and the object of the Act.
>
> 8 (1970) 1 SCC 248 The legislative policy as to the necessity is a matter of legislative judgment and the Court will not examine the propriety of it. The legislation need not be all embracing and it is for the Legislature to determine what categories will be embraced. In Dalmia case (Ram Krishna Dalmia v.

S.R. Tendolkar, 1959 SCR 279) it was said that the two tests of classification were first that there should be an intelligible differentia which distinguished persons or things grouped from others left out and secondly the differentia must have a rational relation to the object sought to be achieved by the statute"

36. Most recently, a Constitution Bench of this Court in the case of Navtej Singh Johar & Ors. Vs. Union of India Thr. Secretary, Ministry of Law and Justice9, while considering the question of scrapping Section 377, IPC as violative of Article 14 has detailed out the test of reasonable classification under Article 14 as under :-

> "We, first, must test the validity of Section 377 IPC on the anvil of Article 14 of the Constitution. What Article 14 propounds is that "all like should be treated alike". In other words, it implies equal treatment for all equals. Though the legislature is fully empowered to enact laws applicable to a particular class, as in the case at hand in which Section 377 applies to citizens who indulge in carnal intercourse, yet the classification, including the one made under Section 377 IPC, has to satisfy the twin conditions to the effect that the classification must be founded on an intelligible

> differentia and the said differentia must have a rational nexus with the object sought to be achieved by the provision, that is, Section 377 IPC.
>
> Section 377 has consigned a group of citizens to the margins. It has been destructive of their identities. By imposing the sanctions of the law on consenting adults involved in a sexual relationship, it has lent the authority of 9 (2018) 10 SCC 1 the State to perpetuate social stereotypes and encourage discrimination. Gays, lesbians, bisexuals and transgenders have been relegated to the anguish of closeted identities.

Sexual orientation has become a target for exploitation, if not blackmail, in a networked and digital age. The impact of Section 377 has travelled far beyond the punishment of an offence. It has been destructive of an identity which is crucial to a dignified existence"

37. In the case at hand, it has been held by the Full Bench of the High Court that the classification between Pushtaini and Gair-pushtaini Landowners is based on one class of landowners being sons of the soil, while the other class being mere landowners, who are not directly attached to the land. Further, the object of this classification, as stated by the full bench of the High Court, is to rehabilitate the original residents, i.e the sons of the soil, who are likely to become landless due to the acquisition of their land.

38. While prima facie, the classification and the object sought to be achieved through the said classification seems reasonable, however, the devil lies in the details. The justification given by the GNOIDA Authority, and the Full-bench of the High Court assumes that only Pushtaini landowners permanently reside in the subject land or that the subject land is the primary source of income only for Pushtaini landowners, and this assumption has been backed by no empirical data produced by the authority.

39.While the classification made by Greater Noida has been based on the object of giving fair compensation, however, such a laudable object of the classification would stand breached by the effects of such a classification, creating a dissonance between the object and its effect. Many Gair-pushtaini landholders, whose main area of residence or their main source of income is also the subject land, would be subject to great discrimination and injustice, if the same compensation that has been granted to the pushtaini landholders is not extended to them.

40. Further, it is also to be noted that this Court at this stage cannot enter into a fact finding mission to verify the claims of the respondent authority. To justify such a classification, the respondent authority should have discharged their burden of proof to back their claim. Mere statements without any evidence cannot be accepted by us as justification for the said classification, which can have a debilitating effect on those who are at the losing side of the classification.

41. To survive the rigors of Article 14, the impugned classification must not only make it through the abovementioned test, but also clear the Wednesbury Principle, and by extension the Proportionality test.

WEDNESBURY PRINCIPLE

42. In the case of Associated Provincial Picture Houses Limited v.

Wednesbury Corporation10, the King's Bench Division was tasked with the question of under what circumstances can the Court interfere in cases of administrative law making. While dealing with this, the Court held that interference in administrative decisions was permissible, only if (i) the order was contrary to law (ii) or relevant factors were not considered, or (iii) irrelevant factors were considered or, (iv) or the decision was such that no other authority under similar circumstances would have come to this conclusion. The relevant paragraph of the judgment are reproduced herein:

> "In the result, this appeal must be dismissed. I do not wish to repeat myself but I will summarize once again the principle applicable. The Court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the Court can interfere.
>
> The power of the Court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have 10 [1948] 1 KB 223 contravened the law by acting in excess of the powers which Parliament has confided in them. The appeal must be dismissed with costs."

43. The Wednesbury principle was first introduced to Indian Jurisprudence in the case of Om Kumar & Ors. Vs. Union Of India 11. Here, again, a similar question was posed before the Supreme Court, as to when can the Court exercise its power of judicial review in cases of executive law making. This Court, reiterated the same principles laid down in the Wednesbury case. The relevant extracts from the said judgment is reproduced hereunder:-

> "Lord Greene said in 1948 in the Wednesbury case [(1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] that when a statute gave discretion to an administrator to take a decision, the scope of judicial review would remain limited. He said that interference was not permissible unless one or the other of the following conditions was satisfied, namely the order was contrary to law, or relevant factors were not considered, or irrelevant factors were considered; or the decision was one which no reasonable person could have taken. These principles were consistently followed in the UK and in India to judge the validity of administrative action."

44. The classification made by GNOIDA does not find its footing in the Land Acquisition Act, or the UP-Land Acquisition Rules, and hence is contrary to law. The said classification also suffers from not taking into account relevant considerations. The Authority, without taking into account any empirical data, 11 (2001) 2 SCC 386 or calculating any possibility of Gair-pushtaini landowners being rendered landless or without a primary source of income, made the impugned classification. These relevant factors, by not being taken into account, can and would cause great injustice to Gair-pushtaini landowners.

45. Further, GNOIDA, by arbitrarily classifying the landowners as Pushtaini and Gair-pushtaini on the basis of a cut-off date, have taken into account an irrelevant factor. The cut-off date by itself, without any context of the landowners on ground, is not indicative of who the most adversely affected landowners are. By not complying with these three factors while making the classification, this Court must strike down such a classification.

46. While the Wednesbury principle has been used as a guiding principle of interpretation, the Indian Court have now adopted a much more rigorous test, i.e., is proportionality test, to see whether an administrative action can survive the rigours of Article 14.

PROPORTIONALITY TEST

47. In the case of Om Kumar (Supra), this Court held that the administrative measure must not be more drastic than is necessary for attaining the desired result. This was the first formal introduction of the Proportionality test to Indian Jurisprudence, however the Court pointed out that the proportionality test has been used by the Indian Courts even before this judgment. The relevant paragraphs from the said report reads as under :-

> “27.The principle originated in Prussia in the nineteenth century and has since been adopted in Germany, France and other European countries. The European Court of Justice at Luxembourg and the European Court of Human Rights at Strasbourg have applied the principle while judging the validity of administrative action. But even long before that, the Indian Supreme Court has applied the principle of “proportionality” to legislative action since 1950, as stated in detail below.
>
> 28. By “proportionality”, we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority “maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve”. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the Court.

That is what is meant by proportionality.

29.The above principle of proportionality has been applied by the European Court to protect the rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and in particular, for considering whether restrictions imposed were restrictions which were "necessary" — within Articles 8 to 11 of the said Convention [corresponding to our Article 19(1)] and to find out whether the restrictions imposed on fundamental freedoms were more excessive than required. (Handyside v. UK [(1976) 1 EHR 737]). Articles 2 and 5 of the Convention contain provisions similar to Article 21 of our Constitution relating to life and liberty. The European Court has applied the principle of proportionality also to questions of discrimination under Article 14 of the Convention (corresponding to Article 14 of our Constitution). (See European Administrative Law by J. Schwarze, 1992, pp. 677-866).

30. On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian Courts did not suffer from the disability similar to the one experienced by English Courts for declaring as unconstitutional legislation on the principle of proportionality or reading them in a manner consistent with the charter of rights. Ever since 1950, the principle of "proportionality" has indeed been applied vigorously to legislative (and administrative) action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India — such as freedom of speech and expression, freedom to assemble peaceably, freedom to form associations and unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India, — this Court has occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. The burden of proof to show that the restriction was reasonable lay on the State. "Reasonable restrictions" under Articles 19(2) to (6) could be imposed on these freedoms only by legislation and Courts had occasion throughout to consider the proportionality of the restrictions. In numerous judgments of this Court, the extent to which "reasonable restrictions" could be imposed was considered. In Chintamanrao v. State of M.P. [1950 SCC 695 : AIR 1951 SC 118 : 1950 SCR 759] Mahajan, J. (as he then was) observed that "reasonable restrictions" which the State could impose on the fundamental rights "should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public".

31. "Reasonable" implied intelligent care and deliberations, that is, the choice of a course which reason dictated. Legislation which arbitrarily or excessively invaded the right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control permissible under Articles 19(2) to (6). Otherwise, it must be held to be wanting in that quality. Patanjali Sastri, C.J. in State of Madras v. V.G. Row [(1952) 1 SCC 410 : AIR 1952 SC 196 :

> 1952 SCR 597 : 1952 Cri LJ 966] , observed that the Court must keep in mind the "nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time". This principle of proportionality vis-àvis legislation was referred to by Jeevan Reddy,

J. in State of A.P. v. McDowell & Co. [(1996) 3 SCC 709] recently. This level of scrutiny has been a common feature in the High Court and the Supreme Court in the last fifty years. Decided cases run into thousands.

32. So far as Article 14 is concerned, the Courts in India examined whether the classification was based on intelligible differentia and whether the differentia had a reasonable nexus with the object of the legislation. Obviously, when the Courts considered the question whether the classification was based on intelligible differentia, the Courts were examining the validity of the differences and the adequacy of the differences. This is again nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of being unreasonable [see Air India v. Nergesh Meerza [(1981) 4 SCC 335 : 1981 SCC (L&S) 599] (SCC at pp. 372-373)]. But this latter aspect of striking down legislation only on the basis of "arbitrariness" has been doubted in State of A.P. v. McDowell and Co. [(1996) 3 SCC 709] .

33. In Australia and Canada, the principle of proportionality has been applied to test the validity of statutes [see Cunliffe v. Commonwealth [(1994) 58 Aust LJ 791] Aust LJ (at 827,

839) (799, 810, 821)]. In R. v. Oakes [(1986) 26 DLR (4th) 200] Dickson, C.J. of the Canadian Supreme Court has observed that there are three important components of the proportionality test. First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Secondly, the means, must not only be rationally connected to the objective in the first sense, but should impair as little as possible the right to freedom in question. Thirdly, there must be "proportionality" between the effects of the measures and the objective. See also Ross v. Brunswick School Dishut No. 15 [(1996) 1 SCR 825] (SCR at p. 872) referring to proportionality. English Courts had no occasion to apply this principle to legislation. The aggrieved parties had to go to the European Court at Strasbourg for a declaration.

34. In U.S.A., in City of Boerne v. Flores [(1997) 521 US 507] the principle of proportionality has been applied to legislation by stating that "there must be congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end".

35. Thus, the principle that legislation relating to restrictions on fundamental freedoms could be tested on the anvil of "proportionality" has never been doubted in India. This is called "primary" review by the Courts of the validity of legislation which offended fundamental freedoms.
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45. Under Article 3(1) of the Human Rights Act, 1998 the English Court can now declare the legislative action as incompatible with the rights and freedoms referred to in the schedule. The Minister is then to move Parliament for necessary amendment to remove the incompatibility. While doing so, the English Court, can now apply strict scrutiny or proportionality to legislative and administrative action. The principle is now treated as central to English law (See Human Rights Law and Practice by Lord Lester of Herne Hill, Q.C. & David Pannick QC, 1999, para 3.16). The more the threshold of Wednesbury irrationality is lowered when fundamental human rights are on play, the

easier it will become to establish judicial review as an effective remedy with Article 13 of the 1998 Act (see, ibid, Supplement August, 2000, para 4.13.12).

48. This test of proportionality has been developed by the Indian Courts throughout the years and has now attained the form of a five-pronged test, as stated in the K. S. Puttaswamy & Anr. Vs. Union of India & Ors.12 judgment, and more recently, in the Gujarat Mazdoor Sabha & Anr. Vs. State of Gujarat13.

49. In K.S.Puttaswamy(Supra), a nine-Judge Bench of this Court while deciding the question as to whether the Constitution of India guarantees to each individual a fundamental right to privacy, expounded the 'principle of proportionality and legitimacy' in relation to infringement of rights as a result of State measures. It was held that proportionality is essential for protection from arbitrary State action as it ensures that the nature and quality of the encroachment on the right is in proportion to the purpose of law. While 12 (2017) 10 SCC 1 13 (2020) 10 SCC 459 summarizing the aforementioned principle into a four-pronged test, the Bench held:

> "...The action must be sanctioned by law;
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> The proposed action must be necessary in a democratic society for a legitimate aim;
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> The extent of such interference must be proportionate to the need for such interference;
>
> There must be procedural guarantees against abuse of such interference."
>
> 50. In the case of Gujrat Mazdoor Sabha (Supra) during covid-19, the Central Government had passed a notification severely affecting the pay of unskilled workers, on the grounds of national emergency. This notification was challenged on grounds of violation of Article 14, specifically in violation of the principle of proportionality. The Court held that, in order to determine the validity of state action that could infringe on fundamental rights, it must pass the following conditions, namely, (i) The interfering with the fundamental rights must have a state purpose, (ii) the said rights infringing measure must be based on a rational nexus between the interference and the state aim,(iii) the measures bust be necessary to achieve the state aim,(iv) the restrictions must be necessary to protect the legitimate objective and (v) The state should provide sufficient safeguards for the possibility of an abuse of such rights infringing interference.

On the basis of these conditions of proportionality, this Court struck down the notification.

51. Although the fifth prong, as mentioned in the Gujarat Mazdoor Sabha (Supra) has not been expressly mentioned in Puttaswamy, Chandrachud J (as His Lordship then was), in our view, rightly has read that in in the Gujarat Mazdoor Sabha case (supra) to complete the test. State action that leaves sufficient room for abuse, thereby acting as a threat against free exercise of fundamental

rights, ought to necessarily be factored in in the delicate balancing act that the judiciary is called upon to do in determining the constitutionality of such state action - whether legislative, executive, administrative or otherwise.

The relevant paragraph of the judgment has been mentioned herein:

> "The principle of proportionality has been recognized in a slew of cases by this Court, most notably in the seven-judge bench decision in K S Puttaswamy vs. Union of India. The principle of proportionality envisages an analysis of the following conditions in order to determine the validity of state action that could impinge on fundamental rights:
>
> (i) A law interfering with fundamental rights must be in pursuance of a legitimate state aim;
>
> (ii) The justification for rights-infringing measures that interfere with or limit the exercise of fundamental rights and liberties must be based on the existence of a rational connection between those measures, the situation in fact and the object sought to be achieved;
>
> (iii) The measures must be necessary to achieve the object and must not infringe rights to an extent greater than is necessary to fulfil the aim;
>
> (iv) Restrictions must not only serve legitimate purposes; they must also be necessary to protect them; and
>
> (v) The State should provide sufficient safeguards against the abuse of such interference.

We are unable to find force in the arguments of the learned counsel for the Respondent. The impugned notifications do not serve any purpose, apart from reducing the overhead costs of all factories in the State, without regard to the nature of their manufactured products. It would be fathomable, and within the PART G 30 realm of reasonable possibility during a pandemic, if the factories producing medical equipment such as life-saving drugs, personal protective equipment or sanitisers, would be exempted by way of Section 65(2), while justly compensating the workers for supplying their valuable labour in a time of urgent need. However, a blanket notification of exemption to all factories, irrespective of the manufactured product, while denying overtime to the workers, is indicative of the intention to capitalize on the pandemic to force an already worndown class of society, into the chains of servitude."

52. We have already in the discussion for the reasonable classification test held that the interfering law, i.e. the impugned notification that creates the classification, does not have a rational nexus to the object sought to be achieved, and thus, violates the first two prongs of the proportionality test.

53. We then come to the third and fourth prong of the proportionality test, i.e whether the classification created by the Authority was a necessity to achieve the state aim of compensating those landowners that are either direct residents of the land or the land exists as their primary source of income and whether such measure was proportional to the object sought to be achieved. For this, it is pertinent to refer to Section 23 of the Act, which provides for matters to be taken into account while determining the compensation. The said Section reads as under : -

> "23. Matters to be considered in determining compensation.
>
> -
>
> (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration first, the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of serving such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change, and sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land."

54. A bare perusal of Section 23 would show that, the grounds for classification as purported by the GNOIDA authority, have already been covered by Section 23 of the Act. The fifth point of the said Section squarely covers the requirement of compensating for rehabilitation of the affected landowners. In the presence of an already existing provision in the act, the classification created by the GNOIDA authority, must exist in furtherance of the said Section, and not in contrast of.

55. The classification, as discussed above, if allowed to exist, can lead to several Gair-pushtaini landowners who may also need to be rehabilitated, cannot rehabilitate themselves without compensation for the same. This circumstance alone besides being discriminatroy pits the said classification against Section 23 of the Act, causing an insubordination to the 1894 Act. Such a mischief, if allowed to exist, would not only nullify the purpose of the Act, but also violate the third and fourth principle of the proportionality test, and hence is liable to be struck down.

56. Further, it is also important to note that the classification, even if allowed to exist, does not come with any safeguards against its potential abuse. As mentioned above, the said notification by way of its classification creates disastrous mischief, and the notification does nothing to remedy such potential abuse. No guidelines for the said classification exist, nor are there any bars placed. If such classification is left unchecked, it may lead to bad precedence, and disastrous ramifications in the future. This lack of substantive guidelines also violates the fifth prong of the proportionality test.

57. On the basis of the abovementioned discussions emerging from the settled principles, Issue no. 2 is answered in affirmative and in favour of the Appellants herein, and the impugned classification is liable to be struck down as violative of Article 14 of the Constitution of India.

Whether the classification made by the Full-Bench of the High Court between Pushtaini landowners and Gair-pushtaini landowners is in contravention to the law laid down by this Hon'ble Court in the case of Nagpur Improvement Trust and another vs. Vithal Rao and others (1973) 1 SCC 500?

58. In the case of Nagpur Improvement Trust (Supra) this Hon'ble Court was tasked to deal with the question of whether certain provisions the Nagpur Improvement Trust Act, 1936 were in violation of Article 14. Here, the impugned provisions of the said Act allowed the acquisition of lands at rates lower than the rates as prescribed in the Land Acquisition Act. What is relevant to our case, is that the Court, while deciding this matter, held that the authority, while acquiring land, cannot distinguish between types of owners, as the object of achieving land for public purposes is met with, irrespective of the type of owner whose land is being acquired. The relevant paragraphs from the judgment reads as under:-

> "It is now well-settled that the State can make a reasonable classification for the purpose of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question.
>
> In this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.
>
> What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes?
>
> It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a

> public purpose, the object is equally achieved whether the land belongs to one type of owner or another type."

59. In our opinion, a bare reading of the abovementioned judgment makes it amply clear that the classification made by the GNOIDA authority for the purposes of awarding differential compensation is bad in law, and it is precisely this kind of classification that has been barred. When the purpose of the acquisition of the land is for the benefit of the public at large, then the nature of the owner of the said land is inconsequential to the purpose. If such a classification on the basis of the nature of owner is allowed, then on the same grounds, there might be a possibility of future classifications where powerholding members of the society may get away with a larger compensation, and the marginalized may get lesser compensation. This is precisely what this Court in the abovementioned judgment predicted, and to pre-

empt such arbitrary classification, clarified the position in law.

60. The Land Acquisition Act does not distinguish between classes of owners, and uniformly provides compensation to all class of landowners. The classification made between Pushtaini landowners and Gair-pushtaini landowners, on the basis of the reasoning mentioned above, is violative of the law laid down in the Nagpur Trust case (Supra) and Article 14 of the Constitution.

Conclusion

61. In light of the above-mentioned reasoning, we are of the opinion that the classification made by both the executive actions is bad in law, and is liable to be set aside. The Land Acquisition Act does not envisage any differential compensation on the basis of such classification, and hence, this Court must infer the compensation to be provided by the executive actions within the confines of Section 23 of the Act.

62. Section 23 of the Land Acquisition Act states out the grounds for granting compensation in cases of acquisition of land under the Act. One such reason for the grant of compensation is rehabilitation, and it is this need for granting compensation for rehabilitation under the Act that is echoed by the impugned notification. A bare reading of both the executive actions in consonance with the Act would show that the need for giving compensation for rehabilitation is valid in law and is backed by the parent statute. The mischief then, is only limited to the arbitrary classification made by such actions. In such a case, we are of the opinion that since the mischief lies only within the classification, it can be severed, and the remaining part of the executive actions that sets out to grant compensation for the purpose of rehabilitation remains valid in law.

63. Once the classification is removed, and the executive actions are read in consonance with the parent act, we would see that since the Act, and now even the executive actions do not discriminate in terms of compensation, the ex-

gratia payment and the increased base amount, as enunciated by the executive actions, must be given to all landowners in the subject area.

64. At this stage, we would like to state that while the objective of the said classification might have been noble, however, such classification only on the basis of conjectures and surmises cannot be sustained. If a claim is being made to differentiate between class of persons, such claim must be backed by empirical data. While this Court is not a fact-finding Court and is a Court of law, however, the law must also not be understood in isolation, but in the context in which it exists, as the law does not exist like an object within the statutes, but lives and evolves with the people it governs.

65. Further, in cases of administrative action, even if the classification has a rational nexus to the objective of the notification, the classification must also be legitimized by the parent statute. If the parent statute does not allow for a classification, then, even if the classification vis-à-vis the notification is able to pass the tests of Article 14, it would still be liable to struck down if the parent statute does not allow for the same.

66. The establishment of Greater Noida, as discussed above, was done for a noble purpose, i.e., to accommodate in the city all those who came travelling from every corner of the country in search of a better life. While doing so however, as can be seen in the present case, some residents whose land was subject to acquisition in the pursuit of the said aim, were faced with discrimination. In such circumstance, it becomes the duty of this Court to dispense justice, and rectify the harm caused to those at the receiving end of the discrimination.

67. In view of the above discussions, the impugned judgment passed by the Full Bench of the High Court is not liable to be sustained and stands set aside.

As a consequence, the Writ Petition filed by the appellants before the High Court stands allowed and the appellants are held entitled to the reliefs claimed in the said Writ Petition.

68. Accordingly, the appeals stand allowed.

69. In the facts and circumstances, we do not make any order as to costs.

.....,J.

(KRISHNA MURARI) .....,J.

(S. RAVINDRA BHAT) NEW DELHI;

20TH FEBRUARY, 2023