

NAVJYOTI CO-OP. GROUP HOUSING SOCIETY ETC.

A

v.

UNION OF INDIA AND ORS.

SEPTEMBER 17, 1992

[S. MOHAN AND G.N. RAY, JJ.]

B

*Delhi Development Authority (Disposal of Nazul Lands) Rules, 1981:*

*Rules 6(vi), 21—Government of India Memo dated 20.1.90 containing policy decision—Allotment of land to Cooperative Housing Societies—Procedure to be followed—‘First come first served’—Meaning of—Seniority for purposes of allotment—Whether from date of registration or final approval of list of Members—Doctrine of ‘Legitimate Expectation’—Applicability of.*

C

*Administrative Law:*

*Doctrine of Legitimate Expectation—Deviation from consistent part policy/practice—Affording of opportunity—Need for.*

D

**For sometime, the Registrar, Cooperative Societies was not registering any Group Housing Society under the provisions of Delhi Cooperative Societies Act, 1972 presumably because there was very little chance of their getting land for construction. In the meantime there was large scale acquisition of land in Delhi and most of the land had been frozen. Of the land made available to DDA, it was constructing residential units on 60% of the land and the balance 40% land was to be allotted to different Group Housing Societies. One of the norms laid down for such allotment was that the Society should not have less than 60 and more than 300 members.**

E

F

**On July 16, 1983, a public notice was issued by the Delhi Administration to the effect that it had decided to re-open the registration of Group Housing Societies. The last date for receipt of application was 17th August, 1983 which was further extended to 10th August, 1983. Out of 2600 Societies which applied for registration 1406 Societies were registered.**

G

**On March 13, 1984, the Registrar issued a Public Notice to the effect that those societies registered in 1983-84 and desirous of seeking land through DDA, may apply to the Registrar. Subsequently, time was extended up to July 31, 1985. Most of the societies furnished their list of**

H

A members for verification. The Registrar approved such lists at various points of time. The time taken for verification and approval of the lists varied from 1 day to 5-1/2 years from the date of filing of the lists.

B On January 20, 1990, the Government of India issued an Office Memorandum containing guidelines regarding procedure for allotment of land, according to which the criterion for allotment of land was not on the basis of the date of registration of the Society, but on the basis of the date of approval of the final list by the Registrar. On this basis a seniority list of 409 societies was prepared and allotment of land by draw of lots was made in respect of 260 societies. Prior to the draw of lots some societies  
C filed Writ Petitions before the High Court challenging the validity of the abovesaid Memorandum dated January 20, 1990.

While DDA made allotment of land to 260 societies it specifically mentioned in the allotment order that the proposed allotment was subject to the decision on the Writ Petitions.

D The High Court allowed the Writ Petition, quashed the Memorandum dated January 20, 1990 and set aside the allotments/proposed allotments. It also indicated that the term 'first come first served' appearing in Rule 6(vi) of the DDA (Disposal of Nazul Land) Rules, 1981 meant that those Societies who first come for allotment will get preference over the Societies who applied at a subsequent point of time.

E Being aggrieved by the High Court's judgment, the Petitioner Societies preferred the present Special Leave Petition and Writ Petitions. Intervention Petitions have also been filed.

F On behalf of the petitioners and intervenors, it was contended that priority on the basis of earlier registration number of the Group Housing Societies cannot be accepted as reasonable; that the petitioner Societies would not get allotment in the near future and they may have to wait indefinitely for a longer time and by such process they were bound to suffer  
G a serious prejudice not only on account of escalation of cost of construction with the lapse of time but also on account of getting refund of hard earned money paid by such Societies without any interest whatsoever; that the expression 'first come first served' in Rule 6(vi) of the DDA (Disposal of Nazul Land) Rules, has not been indicated and explained and it was  
H therefore open for the Central Government to issue guidelines consistent

with the principle of fairness and reasonableness by indicating what should be the principle for allotment in terms of Rule 6(vi) on the basis of 'first come first served'. A

On behalf of the DDA, it was stated that the brochure published by it clearly indicated that allotment should be made on the basis of the date of the registration, that registration is an essential condition to become eligible to get allotment and previously on the basis of the date of registration priority for allotment has been given; that after the judgment of the High Court, the Central Government has taken into consideration the reasonings given by the High Court and having accepted the reasons has not preferred any appeal from the said judgment and the circular in question has been withdrawn by the letter dated August 2, 1991; and that it has no objection in making allotment with reference to the date of registration. B C

Dismissing the Special Leave Petition and disposing of the Writ Petitions and the Intervention Applications, this Court, D

**HELD:** 1. The High Court has taken a very reasonable view in holding that the expression 'first come first served' appearing in Rule 6(vi) of the DDA (Disposal of Nazul Lands) Rules, 1981 relates to the seniority with reference to the date of Registration of Group Housing Societies with the Registrar. The High Court also noted that in a number of cases the list of Members was not approved for years together, and it rightly held that there has to be certainty in the seniority with reference to which priority in the matter of allotment is to be given and fixation of such seniority cannot be left to the whims and fancies of any official. It is quite likely that registration has not always been made strictly according to the point of time when the applications for registration were received. But the serial numbers of registration need not be disturbed after such long lapse of time. Until the new criterion for allotment was given in the memorandum of January 20, 1990, priority in the matter of allotment to Group Housing Societies had all along been given with reference to date of Registration. In the brochure of 1982 issued by the DDA, such policy of priority was clearly indicated. [727 B-G] E F G

*Udit Narayan Singh Malpatharia and Ors. etc. v. Additional Member, Board of Revenue, Bihar, [1963] Suppl. 1 SCR 676; Prabodh Verma v. State of Uttar Pradesh and Ors. etc., [1985] 1 SCR 216 and Indian Metals and H*

A *Ferro Alloys Ltd., Cuttak v. The Collector of Central Excise, Bhubaneshwar*, AIR 1991 SC 1028, referred to.

B 2. The High Court is justified in holding that after registration, the only thing which was required to be done by the Registrar was to approve the list of members on proper verification and to forward the cases of registered Societies to DDA for allotment. It is unfortunate that such lists were not approved promptly. If such lists had been approved without inordinate delay, the question of allotment on the basis of the new criterion as contained in the Memorandum dated January 20, 1990 would not have arisen because admittedly prior to the new guideline, allotment was referable to the seniority in registration. [728 B-D]

D 3.1. In any event the new policy decision as contained in the memorandum of January 20, 1990 should not have been implemented without making such change in the existing criterion for allotment known to the Group Housing Societies if necessary by way of public notice so that they might make proper representation to the concerned authorities for consideration of their view points. Even assuming that in the absence of any explanation of the expression 'first come first served' in Rule 6(vi) of Nazul Rules there was no statutory requirement to make allotment with reference to date of Registration, it has been rightly held by the High Court that prior to the new guideline contained the memo of January 20, 1990 the principle for allotment had always been on the basis of date of Registration and not the date of approval of the list of members. In the brochure issued in 1982 by the DDA even after Gazette Notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. Thus the Group Housing Societies were entitled to the benefit arising out of 'legitimate expectation' because of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. [729 B-E]

G 3.2. The doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. No compelling reasons were taken

H

into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline. On the contrary, the DDA and/or Central Government do not intend to challenge the decision of the High Court, and the memorandum of January 20, 1990 has since been withdrawn. In the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice. [730 B-E]

*Council of Civil Service Union & Ors. v. Minister for Civil Service*, [1985] 3 All England Reporter 935, referred to.

*Halsbury's Laws of England—Fourth Edition, (Re-issue), Vol. 1(1) p.151*, referred to.

CIVIL APPELLATE JURISDICTION: SLP (Civil) No. 10857 of 1991.

From the Judgment and Order dated 10.5.91 of the Delhi High Court in W.P. 2885 of 1990.

WITH

W.P. Nos.665/91 and 667/91.

(Under Article 32 of the Constitution of India)

K.Madhava Reddy, B.Prakash, G. Prabhakar and Ms. Chitra Markandaya for the Appellant/petitioner.

Arun Jaitley, Harish N. Salve, A.K. Ganguli, G.L. Sanghi, S.S. Ray, Ms. Indu Malhotra, A.K. Gupta, Ranjan Mukherji, V.C. Rishi, Pradeep Misra, D.V. Sehgal, K.L. Vohra, Shiv Pujan Singh, K.R. Rejeshkaran Pillai, Ms. Sheela Goel Ms. Bina Gupta, R. Venkataramani, S. Murlidhar, Arun K. Sinha, Ashok Kumar Gupta, S.P. Sharma, B.B. Sawhney, Sushil Kr. Jain, B.D. Ahmed, Parijat Sinha, K.R.R. Pillai, Pankaj Kalra, B.Mohan and Guntur Prabhakar for the Respondents.

The Judgment of the Court was delivered by

A G.N. RAY, J. Legality and validity of the policy decision of Government of India dated January 20, 1990, containing the guidelines regarding the procedure for allotment of land by the Delhi Development Authority (hereinafter referred to as DDA) to different Cooperative Group Housing Societies are in dispute in this Special Leave Petition No. 10857 of 1991 arising out of the Judgment dated May 10, 1991 of the Division Bench of the Delhi High Court in C.W.P. No. 2885 of 1990 (*Kaveri Cooperative Group Housing Society Ltd. v. Union of India and others*) and several applications for intervention and for adding and impleading of parties to the special leave petition. The backdrop of relevant events in connection with the issuance of the aforesaid guidelines by the Central Government have been succinctly indicated in the impugned judgment of the Delhi High Court and may be stated hereunder:-

D Prior to July 16, 1983, for some period of time the Registrar, Cooperative Societies, Delhi Administration, (hereinafter referred to as Registrar) was not registering any Group Housing Society under the provisions of Delhi Cooperative Societies Act, 1972, presumably because there was very little chance of such societies being able to get land for construction. As a result of large scale acquisition of land in Delhi either at the instance of the Central Government or the DDA, most of the land in Delhi had been frozen. It appears that under the instructions of the Union of India, the DDA itself had been constructing for residential units on 60% land made available to it and 40% of such land was being allotted by it to different Cooperative Group Housing Societies. One of the norms which was laid down by the DDA for making allotment to Cooperative Housing Societies is that the Society should not have less than 60 and more than 300 members. On July 16, 1983, a public notice was issued by the Delhi Administration to the effect that the administration has decided to re-open the registration of Group Housing Societies. Those Societies which have membership between 60 and 300 and who did not own any residential property and the members are residents of Delhi can be registered. The application for such registration was to be accepted in the office of the Registrar between July 18, 1983 and August 17, 1983 on a prescribed form to be available from the office. Later on by a Press Note dated August 17, 1983, the period of registration was extended to August 30, 1983. Large number of persons thereafter formed Group Housing Cooperative Societies and applied for registration with the Registrar. Out of 2600 Societies which applied for registration 1406 Societies were registered. The

Societies had to apply and obtain registration by satisfying all the provisions of the Delhi Cooperative Societies Act and the rules framed thereunder. On March 13, 1984, the Registrar issued a public notice in the leading newspapers of Delhi to the following effect:-

"DDA has now intimated that they would now consider allotment of land to Group Housing Societies registered in 1983- 84. Those Societies who have closed their membership and desire to seek land through DDA are requested to submit their membership list and other documents to the office of the Registrar, Cooperative Societies on prescribed proforma available with the office from 20th March, 1984 onwards."

In view of such notice, 1406 Societies which had got themselves registered were required to submit their final membership list to the Registrar and such are also required to submit other documents on the prescribed proforma. The list was required to be submitted on or before March 20, 1984. No time limit, however, was stipulated for the submission of such list. On May 13, 1985, another public notice was issued in which it was stated that so far, out of 1406 registered Societies, only 652 Societies had submitted their list in the prescribed proforma for onward transmission to DDA for the purpose of allotment of land. The public notice dated May 13, 1985 indicated that the balance 754 Societies would submit their final membership list in the prescribed proforma within 30 days of the issuance of the notice failing which it will be presumed that such Societies were not pursuing their main objective. The time limit of 30 days was to be reckoned from May 13, 1985. Such date was, however, extended to July 31, 1985 vide another public notice dated July 2, 1985. It, therefore, appears from the aforesaid three public notices dated March 13, 1984, May 13, 1985 and July 2, 1985 that those Societies who intended to get allotment of land from the DDA should submit their final list of membership along with other relevant documents and affidavits to the Registrar and the Registrar after verification would transmit the said documents to the DDA for the purpose of allotment of the land. The Central Government formulated DDA (Disposal of Developed Nazul Land) Rules, 1981, (hereinafter referred to as Nazul Rules). It appears that after public notice dated May 13, 1985, 239 more societies submitted their lists and after the last public notice of July 2, 1985, about 400 and odd Societies submitted their lists to the Registrar. It

- A appears that after the lists had been received by the Registrar from various Societies, correspondence was exchanged between the Registrar and some of the Societies with regard to the verification of the lists of members submitted by the concerned Societies. The exercise had been undertaken in order to ensure that the members of the Societies fulfill the criteria to become eligible for allotment of flats. The lists submitted by various
- B Societies were approved by the Registrar at various points of time and it appears that some of the lists though received earlier were in fact approved later. Similarly, in case of some Societies though the list was received later, approval was made earlier. It may be indicated here that the DDA issued a brochure in 1982 titled "The concept of social security takes a step further to reality". The said brochure contained *inter alia* the criteria for allotment
- C of land by DDA to the registered Cooperative Group Housing Societies. It was specifically mentioned in the criteria for allotment that the allotment was being made in accordance with the seniority i.e. serial No. and date of registration of Societies with the Registrar Cooperative Societies, Delhi,
- D subject to filing the list of members for verification by the Registrar and payment of 25% of the cost of land within 30 days and payment of the remaining 75% within 90 days from the date of issue of demand notice.

On January 20, 1990, the impugned Office Memorandum containing the guidelines regarding the procedure for allotment of land was issued by

E the Government of India to the following effect:-

F "The undersigned is directed to refer to the minutes of the meeting held in this Ministry on 23rd October, 1989, circulated to all concerned by our O.M. of even number dated 13.11.1989 and to convey the approval of this Ministry to the procedure outlined below in the matter of allotment of land to Group Housing Societies in Delhi.

G (a) The date of seniority for allotment of land for a Cooperative Group Housing Society will be date on which the papers of the Society have been found in order and approved by the office of the Registrar, Cooperative Societies, Delhi Administration.

H (b) In case where part approvals have been accorded by the office of the Registrar, Cooperative Societies on Different occasions, the last date of approval will be relevant

for the purpose.

A

(c) Where the date of approval is the same in the case of more than one Society, there *inter-se* seniority will be in order of the average age of their members in the descending order. Thus the society with a high average age of the members will rank senior.

B

(d) Land will be offered by DDA for allotment in minimum lots in a given location or area.

Any approved society will be free to apply. In case the number of Societies who apply is more than what can be observed in the land ordered, the allotment will be decided by the order of seniority as determined above.

C

These instructions are issued as clarifications to rule 6(vi) of the DDA (Disposal of Developed Nazul Land) Rules 1981, and may be brought into force with immediate effect."

D

In view of such guidelines, the criterion for allotment of land to the Cooperative Group Housing Societies was not on the basis of the date of registration of such Societies but on the basis of the date of approval of the final list by the Registrar. The Central Government offered lands to DDA comprising 'Dwarka Project' at Papan Kalan for allotment to various Group Housing Societies. In view of the guidelines contained in the said memorandum dated January 20, 1990, a seniority list of presumable 409 Group Housing Societies had been prepared and allotment of land by drawing of lots was also made in respect of 260 Societies. Such draw of lots had been taken up on January 17, 1991. Prior to such draw of lots, C.W.P. No. 2885 of 1990 by Kaveri Cooperative Group Housing Society Limited and a number of Writ Petitions by other Cooperative Group Housing Societies were filed in the Delhi High Court for challenging the legality, validity and the propriety of the said memorandum dated January 20, 1990. No interim orders were issued by the High Court staying the allotments but in most of the cases, some interim orders were passed to the effect that an area of land should be reserved for the Writ Petitioners. In view of the pendency of such writ proceedings challenging the new criteria for allotment, the DDA justifiably made allotment to the aforesaid

E

F

G

H

- A 260 Cooperative Group Housing Societies but in the allotment order it was specifically mentioned that the proposed allotment was subject to the outcome of the result of the Writ Petitions. It was also stated in the letter of allotment that if it was felt necessary in view of the decision in the Writ Petitions, the allotment may have to be reviewed and cancelled in which case the entire amount received by the DDA from the allottee Societies shall be refunded without any payment of compensation or damages.

- B For the purpose of appreciating the contentions of the parties on the question of propriety, legality and validity of the said memorandum dated January 20, 1990, it may be necessary to refer to Rule 6 (vi) and Rule 21 of the Nazul Rules. Such Rule 6(vi) and Rule 21 are set out hereunder:

C Rule 6 (vi)

D Subject to the other provisions of these rules the Authority shall allot Nazul land at the predetermined rates in the following cases, namely:

E (vi) to cooperative group housing societies, cooperative housing societies, consumer cooperative societies and cooperative societies of industrialists on "first come, first serve basis".

F Rule 21

G Nazul land of such size, as the authority may, from time to time, decide with the approval of the Central Government may be allotted on lease-hold basis, at predetermined rates to such cooperative societies, registered under the Delhi Cooperative Societies Act, 1972 (35 of 1972) as are specified in clause (vi) of rule 6, subject to an undertaking given by such society that it shall use such land for its *bonafide* purposes or business only."

- H By the impugned Judgment, the High Court has quashed the said memorandum of January 20, 1990 and has set aside the allotments made or proposed to be made pursuant to the criterion contained in the said memo. The High Court has upheld the contention of the Writ Petitioners including Kaveri Cooperative Group Housing Society Ltd., being respondent No. 4 in the Special Leave petition No. 10857 of 1991, that the

4

critterion of making allotment on the basis of finalisation of the list of members by the Registrar, irrespective of the date of registration of such Societies. is wholly arbitrary and unreasonable and contrary to Rule 6 of the Nazul Rules. Referring to Rule 6 of the Nazul Rules it has been held by the High Court that although the expression "first come first served appearing in Rule 6 has not been specifically explained in the said Rule, Rule 21 of Nazul Rules indicates that those Societies which are registered with the Delhi Cooperative Societies Act, will be entitled to get allotment of land. Referring to the public notices, mentioned hereinbefore the High Court has indicated that there was no application for allotment of land directly to the DDA by the Cooperative Group Housing Societies. The only communication from the Societies was to the Registrar who was acting as an agent or a conduit to the DDA. The registration of Cooperative Societies was not being allowed because the DDA had no land available for allotment and it was only when the land became available for allotment, the Registrar and not the DDA issued notice inviting applications for registration of the Cooperative Group Housing Societies. It was indicated by the High court, and in our view very rightly, that the act of registration by the Group Housing Societies pursuant to the public notice dated July 16, 1983 was in effect applications by the Cooperative Societies for allotment of land from the DDA. The Delhi High Court has indicated in this connection that whereas under the Cooperative Societies Act, the minimum members required for forming the Cooperative Societies should be 10, in the public notice of July 16, 1983, the minimum members required for being eligible for allotment of land are 60 and the maximum numbers are 300. The High Court has held that the term "first come first served" is referable to the date and serial No. of registration of Group Housing Societies pursuant to the public notice dated July 16, 1983. The High Court has also indicated that the respondents including the DDA had all along, until the formulation of new criteria in the impugned memorandum dated January 20, 1990, followed the principle of giving priority in the matter of allotment of land to the Group Housing Societies with reference to date of registration of the concerned Societies and in the Brochure of 1992 of DDA such principle was clearly mentioned. The High Court has held that when DDA itself has understood rule 6 in the aforesaid manner and has followed the criterion of priority with reference to date of registration, ambuiguity, if any, in Rule 6 (vi) for not explaining the expression "first come first served" stands resolved. The High Court has also indicated that the term "first come first served" means that those Societies who first come for allotment will get a preference over the Societies who applied at a

A  
B  
C  
D  
E  
F  
G  
H

- A subsequent point of time. After the registration in 1983, there were no further applications for allotment. What the Societies were required to do by the public notices dated March 17, 1984, May 13, 1985 and July 2, 1985, were only to resubmit their final list of members for verification. According to High Court, the "first come" act of the Societies took place when they came to the Registrar and got themselves registered in 1983. It is that date and no other date which is relevant. It has been held by the High Court that the criterion for allotment as contained in the impugned memorandum dated January 20, 1990 is unreasonable because by the effect of the principle contained in the impugned memorandum the Societies have been left at the mercy of the Registrar but fixation of seniority cannot be left to the whims and fancies of any official and there will be a fixity if reference to date of registration is resorted to. The High Court has indicated that there may be cases, and they probably are, where full particulars may not have been supplied by the Societies. But as and when verification has taken place, it must necessarily relate back to the date when the list of members was filed. The High Court has noted that there are numerous instances to which the attention of the High Court was drawn to show that with no fault of the concerned Societies, they have been relegated to lower positions in the seniority list with reference to the date of approval. As an illustration, the High Court has referred to the case of the petitioner in C.W.P. No. 3219 of 1990, namely, the Thiruvizha Cooperative Group Housing Society Limited. This Society was registered on October 19, 1983. The List of members was received by the Registrar on May 11, 1984. It was sent by the Registrar to the DDA provisionally on May 29, 1984. Thereafter, the list was approved only on January 15, 1990. There is no correspondence which took place between the Society and the Registrar during the period between May 11, 1984 and January 15, 1990 i.e. for a period of over 5 1/2 years. The High Court has indicated that by applying the guidelines of the impugned memorandum, the seniority date which has been assigned to this Cooperative Society is with effect from January 15, 1990, and it was noted by the High Court that the list which was approved by the Registrar after elapse of 5 1/2 years was the same which had been submitted to it by the Society on May 11, 1984 and there was no change in the membership. The High Court has noted that on the other hand there are Societies where the verification was done most expeditiously and the High Court has cited the case of a Society at serial No. 91, the verification of which was submitted within one day of the submission of the list. It has been noted by the High Court that there are about 11 such Societies where the verification was completed within 17 days of their submission of the list of members. It has

also been noticed by the High Court that there are about 25 other Group Housing Societies where the list was verified within a month. On the other hand, there are at least 12 other Societies where the lists were verified after a number of years from the date of submission even though no defects were indicated in the list originally filed. A

It has been held *inter alia* by the High Court that the only exercise which had to be undertaken by the Registrar after March 17, 1984 was to verify whether the lists which had been submitted were in order or not. The Societies already stood registered with the Registrar. It has been indicated by the High Court that it is quite possible that there may be delay in completing the verification because of non-submission or defective submission of papers in respect of one or two members in a society consisting of large number of members. In the view of the High Court it will not be proper and reasonable that because of some defects in the list of the members, which defect is subsequently removed, the seniority of the Society should be radically altered to its disadvantage. Until the new guideline contained in the impugned memorandum was made, the seniority was always fixed on the basis of the date of registration. The date of verification of the list of members was never considered to be a relevant criterion for fixing the seniority for the purpose of allotment. The High Court has also noted that such position had also existed even prior to the promulgation of Nazul Rules. According to the High Court the Nazul Rules and Rule 6 in particular merely give statutory recognition to the practice which was being followed by the DDA namely allotment being made with reference to date of registration. The High Court has indicated that in view of long standing practice the office memorandum dated January 20, 1990 laying down a completely different criterion, should have been made public. The High Court has held *inter alia* that the impugned memorandum dated January 20, 1990 issued by the Central Government is arbitrary and unreasonable and also contrary to Rule 6 of the Nazul Rules and as such the same must be struck down. The list of seniority which was prepared in accordance with the said impugned memorandum was quashed by the High Court and the allotment made or proposed to be made pursuant to such list following the guideline made in the impugned memorandum was also set aside by the High Court. The High Court directed that it will be open to the respondents to refund the money paid by all the Societies to whom allotment had been made or proposed to be made pursuant to the guideline contained in the impugned memorandum. B C D E F G H

- A since quashed by the High Court. The High Court has also directed that if any Society has filed its list but the same has not been approved the said verification should be completed and the list approved or rejected within a period of three months from the date of the judgment. The High Court also issued a writ of mandamus directing the respondents to allot lands to the Group Housing Societies according to seniority i.e. the date of registration
- B on the basis of fresh list to be prepared within three months from the date of the judgment. The names of those societies should be provisionally included in the seniority list whose verification is yet to take place and their names would be subject to deletion if the lists are rejected within the stipulated period of three months for any reason whatsoever. The High
- C Court has also directed that the allotment should take place with respect to the land which was a subject matter of the draw of January 17, 1991 and such allotment should be completed within a period of six months from the date of the Judgment. The allotment to the Societies which were registered prior to the petitioners' Societies or such Societies which were registered under 'Awas Sakar Yojna' will not in any way be affected by the Judgment
- D of the High Court.

Mr. Madhva Reddy, learned counsel appearing for the petitioner in the special leave petition, has contended before us that priority on the basis of earlier registration number of the Group Housing Societies cannot be

E accepted as reasonable. Mr. Reddy has contended that the registration has also not been made strictly on the basis of the receipt of the application. There are instances where although the applications were filed earlier, it took unnecessarily long time to scrutinise and to allot a registration number. If the priority is fixed with reference to the date of registration,

F injustice is bound to be meted out to a number of Societies which though applied earlier were allotted registration number at a later point of time for no fault on their part. Mr. Reddy has also contended that Rule 21 of Nazul Rules refers to registration and such Rule only indicates that for eligibility of a Society to get allotment, the Group Housing Society must be registered. Such Rule, however, does not indicate in any way that the date

G of registration will be any determining factor for allotment of land. He has submitted Rule 6 of the Nazul Rules does not explain the term "first come first served". Since the Rule has not given any indication about the meaning of the said expression, the Central Government is quite justified in supplementing the Rule by indicating the criterion in the impugned memo. In

H

that view of the matter, there is no occasion to hold that statutory rule has been sought to be supplanted by an executive direction. He has submitted that the Central Government on consideration of relevant facts, in its wisdom has accepted the principle or guideline for allotment of land to Group Housing Societies and has indicated that with reference to date of approval of the final list by the Registrar in respect of a registered Society, priority in the matter of allotment will be given. Mr. Reddy has contended that if a Society gets itself Registered by filling a list of members but it does not take any further step to get the list of its members approved or does not file the proper list of members eligible for allotment, it will be unjust and improper to give priority to such a Group Housing Society simply because the said Society got itself registered earlier. Mr. Reddy has contended that ultimately the Society should not only be registered but must have requisite numbers of eligible members. Such requisite number of eligible members is essentially a prerequisite for getting allotment of land from the DDA. Hence, approval of list of eligible members within the parameter of 60 and 300 is an essential condition for getting allotment and if the impugned circular has indicated by laying down a principle that the date of final approval of a list of members of registered Societies will be determining factor for priority in the matter of allotment, it cannot be contended that such principle or guideline is in any way unreasonable, improper and/or unjust or illegal and without jurisdiction. Mr. Reddy has submitted that the Central Government has an authority to issue guideline for allotment of land by DDA and such guideline not having infringed any statutory Rule, and the same being fair and reasonable for the aforesaid reasons, was not liable to be quashed. Consequently the impugned Judgment of the High Court setting aside the allotment made or proposed to be made to Group Housing Societies on the basis of the guideline contained in the same memorandum dated January 20, 1990 is also unjust and illegal and the impugned Judgment of the High Court should, therefore, be set aside. Mr. Reddy has contended that the brochure was issued in 1982. Such brochure, therefore, cannot outweigh the statutory rules as contained in the Nazul Rules supplemented by executive instructions issued by the competent authority. Mr. Reddy has further submitted that unfortunately the High Court has taken into consideration the delay in approving the list of members of some of the Group Housing Societies and the prejudice suffered by such Societies for the inordinate delay but the other

A side of the picture has not been taken note of by the High Court, namely, there are number of Societies which had been registered at a later point of time although they had made applications earlier by complying with the formalities. Since registration has not been made in all cases strictly on the basis of application with proper list of members and with reference to the date of such application, the date of registration should not be considered as a proper criterion for giving priority in the matter of allotment. Mr. Reddy has also contended that in any event the Writ Petitions should not have been entertained by the Delhi High Court because the Societies which were directed to deposit the money for getting allotment orders and in whose favour lots were drawn and were ultimately given allotments of land were not impleaded as parties. Mr. Reddy has contended that it is an accepted principle consistent with natural justice that if some persons are likely to be affected on account of striking down a policy or decision enuring to their benefit, the Court should not embark upon the consideration of the propriety, correctness and validity of such policy or decision in the absence of such persons. In support of such contention, reference was made to the decision of this Court in the case of *Udit Narayan Singh Malpaharia and others, etc. v. Additional Member, Board of Revenue, Bihar*, [1963] Suppl 1 SCR p. 676 and *Prabodh Verma v. State of Uttar Pradesh and others etc.* [1985] 1 SCR p. 216.

E On behalf of the intervenors, the learned counsels also supported the contentions made by Mr. Reddy and submitted that the impugned decision of the High Court has resulted in gross injustice to a number of Group Housing Societies who took pains in not only getting themselves registered but in submitting proper lists of members and had deposited large sums of money. It has been contended that if the decision of High Court is given effect to many of such Societies will not get allotment in near future and they may have to wait indefinitely for a long period and by such process they are bound to suffer a serious prejudice not only on account of escalation of cost of construction with the lapse of time but also on account of getting refund of hard earned money paid by such Societies after a long lapse of time without any interest whatsoever as directed in the impugned Judgment.

H Mr. Ganguli, appearing for one of such intervenors, has further contended that Rule 21 is of no assistance for interpreting Rule 6(vi) and

the scope and import of the said rules have been wrongly understood by the High Court. He has contended that the said two Rules are entirely for different purposes and the expression "first come first served" in Rule 6(vi) has not been indicated and explained in the Nazul Rules and it was, therefore, open for the Central Government to issue guidelines consistent with the principle of fairness and reasonableness by indicating what should be the principle for allotment in terms of Rule 6(vi) on the basis of "first come first served"

Mr. Salve, appearing for the respondent No. 4, Kaveri Cooperative Group Housing Society Limited has supported the impugned decision of the High Court and has submitted that the registration is an essential condition rather *sine qua non* for getting allotment and unless a Society is registered question of getting any allotment does not arise. How much land is to be allotted to such Society will, however, depend upon the number of members within the parameter of 60 and 300. He has contended that if a Society with an intention to get allotment of land makes an application for registration and gets itself registered the ultimate verification of list of members for deciding the extent of land to be allotted to such Society cannot be the sole criterion for giving priority to allotment. He has drawn out attention to several paragraphs of the impugned Judgment of the High Court and has contended that the High Court has given very cogent reasons by indicating illustrations as to how grave injustice will be meted out to a number of Societies if the date of registration is not accepted as the criterion for the priority in the matter of allotment of land. Mr. Salve has contended that the authorities have always been following the date of registration as the criterion for allotment and the allotment has all along been made on such basis. Even in the Brochure of DDA sold to public in 1982 such policy was clearly mentioned. He has also contended that when admittedly there was an intention to depart from the policy referred to in the brochure, and Rule 6(vi) required clarification, it was obligatory for the Central Government and/or the DDA to immediately give a public notice drawing the attention of the public that there has been a proposal to change the policy by introducing a new criterion by way of clarification of Rule 6(vi) so that there was an occasion for the parties likely to be affected by the change in the criterion to make proper representation to the concerned authorities thereby enabling the authorities to have a fresh look in the matter. Admittedly such notice was not given and the DDA behind the back of the Writ Petitioners sought to implement the new

- A criterion to their serious prejudice. Mr. Salve has also contended that since in the Writ Petitions the validity of the memorandum issued by the Central Government on January 20, 1990 was challenged and by that date no specific allotment was made pursuant to such circular, there was no question of impleading the Group Housing Societies likely to be benefitted by the impugned policy. He has, therefore, submitted that no interference is called for and this special leave petition should be dismissed.

- Mr. Arun Jaitley, learned counsel appearing for the DDA, has submitted that in the brochure which was published by the DDA, it was clearly indicated that allotment should be made on the basis of the date of the registration. He has also submitted that registration is an essential condition to become eligible to get allotment and previously it was on the basis of the date of registration, the priority for allotment has been given. He has also stated that after the impugned decision of the High Court, the Central Government has taken into consideration the reasonings given by the High Court and having accepted the reasons has not preferred any appeal from the said judgment and the impugned circular has been withdrawn by the letter dated August 2, 1991. He has made it clear that the DDA has no objection in making allotment with reference to the date of registration.

- Mr. S.S. Ray the learned counsel also appearing for some of the parties in support of the decision of the High Court has submitted that apart from the fact that it is only just and proper to make allotment with reference to the date of registration as very clearly indicated in the Judgment of the High Court, the interpretation of the expression "first come first served" appearing in Rule 6(vi) of Nazul Rules as made by the High Court clearly gets sustenance by the fact that even after the Nazul Rules of 1981, the concerned authorities including DDA understood the said Rule as laying down the principle of giving priority with reference to the date of registration. It was precisely for the aforesaid interpretation of Rule 6(vi) accepted and understood by DDA that in the Brochure of the DDA sold to public in 1982, it was clearly indicated that the allotment was being made on the basis of seniority in registration of the Group Housing Societies with the Registrar. In this connection, he has referred to the decision of this Court made in *Indian Metals and Ferro Alloys Ltd., Cuttack v. The Collector of Central Excise, Bhubaneshwar*, AIR 1991 SC 1028 dealing with interpretation of statute with reference to contemporaneous

exposition. The learned counsels appearing in support of the applications for intervention and impleadment also made their respective submissions. Since such submissions were to the same effect as referred to hereinbefore, we do not propose to indicate such submissions separately.

After giving our anxious consideration to the respective contentions of the parties and considering the facts and circumstances of the case we have no hesitation in upholding the impugned Judgment of the High Court. In our view, the High Court has taken a very reasonable view in holding that the expression "first come first served" appearing in Rule 6(vi) of Nazul Rules relate to the seniority with reference to the date of Registration of Group Housing Societies with the Registrar. Since we are inclined to endorse the reasonings of the High Court in the impugned Judgment we have referred to such reasonings and the finding made by the High Court in some details. It has been noted by the High Court that in a number of cases although application for registration and the list of member of the concerned Group Housing Society was furnished, despite registration of the Society was furnished, despite registration of the Society the list was not approved for years together. In our view, the High Court rightly held that there has to be certainty in the seniority with reference to which priority in the matter of allotment is to be given and fixation of such seniority cannot be left to the whims and fancies of any official. It has been submitted before us by Mr. Reddy and other learned counsels in support of the Special Leave Petition that there has been irregularities in the matter of registration and in all cases registration has not been made strictly on the basis of earlier receipt of the application for registration. We are not oblivious of the proverbial inefficiency of the Government Department and statutory bodies and it is quite likely that registration has not always been made strictly according to the point of time when the applications for registration were received. But the serial numbers of registration need not be disturbed after such long lapse of time. It may be noted that until the new criterion for allotment was given in the impugned memorandum of January 20, 1990, priority in the matter of allotment to Group Housing Societies had all along been given with reference to date of Registration. In the brochure of 1982 of the DDA, such policy of priority was clearly indicated. If in spite of this, the Societies which claim that they should have been registered earlier than some other Societies, kept silent for years and did not challenge improper action in not registering such Societies properly they should not be permitted to contend irregularities at this stage to

A

B

C

D

E

F

G

H

A unsettle the existing State of Affairs. Registration of the Group Housing Society is a *sine qua non* for getting allotment of land from DDA. It has however been decided to allot lands to such Group Housing Societies whose number of members is confined within the parameter of 60 to 300. Pursuant to public notices issued by the Registrar, applications for registration and consequential allotment of land by the DDA were received by the Registrar. In our view, in the facts of the case, the High Court is justified in holding that after registration, the only thing which was required to be done by the Registrar was to approve the list of members on proper verification and to forward the cases of registered Societies to DDA for allotment by approving the list of members. It is unfortunate that such lists were not approved promptly and thereafter forwarded to DDA. If such lists had been approved without inordinate delay, the question of allotment on the basis of the new criterion as contained in the impugned memo dated January 20, 1990 would not have arisen because admittedly prior to the new guideline, allotment was referable to the seniority in registration. We may also indicate here that there is force in the submission of Mr. S.S. Ray that contemporaneous document namely the Brochure of DDA in 1982 clearly indicates how Rule 6(vi) of Nazul Rules was understood and applied by the respondents.

Coming to the question of defect of parties in not impleading the Group Housing Societies which were likely to be affected if the new guideline as contained in the said memorandum of January 20, 1990 is struck down, it may be noted that when the Writ Petitions challenging the legality and validity of the impugned memorandum were presented to Delhi High Court, none of the Group Housing Societies got any order of allotment from the DDA in terms of the new guideline. Such allotments were made only during the pendency of the Writ Petitions expressly on condition that the allotment would abide by the result of the decisions in the pending Writ proceedings and if it becomes necessary on account of the decision rendered in the said Writ Petitions, the provisional allotments would be cancelled and the deposits made for allotments would be returned without any interest. In our view, in such facts it was not at all necessary to find out which of the Societies were likely to get allotments from DDA and to implead them as parties in the Writ petitions. That apart, no real prejudice was caused to the Societies which were likely to be benefitted by the new criterion. Since the allotments in their favour were

made with express condition that such allotments would abide by the decision to be rendered in the Writ Petitions and such allotments were liable to be cancelled on account of the decision to be made in the pending Writ Petitions, the Group Housing Societies likely to be affected by the Judgment in the Writ Petitions could take steps for being impleaded in the proceedings and contest the same if they had so desired.

It also appears to us that in any event the new policy decision as contained in the impugned memorandum of January 20, 1990 should not have been implemented without making such change in the existing criterion for allotment known to the Group Housing Societies if necessary by way of a public notice so that they might make proper representation to the concerned authorities for consideration of their view-points. Even assuming that in the absence of any explanation of the expression "first come first served" in Rule 6(vi) of Nazul Rules there was no statutory requirement to make allotment with reference to date of Registration, it has been rightly held, as a matter of fact, by the High Court that prior to the new guideline contained in the memo of January 20, 1990 the principle for allotment had always been on the basis of date of Registration and not the date of approval of the list of members. In the brochure issued in 1982 by the DDA even after Gazette Notification of Nazul Rules on September 26, 1981 the policy of allotment on the basis of seniority in registration was clearly indicated. In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have may legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at page 151 of Volume 1(1) of Halsbury's *Laws of England* - Fourth Edition (Re-issue). We may also refer to a decision of the *House of Lords in Council of Civil Service Union and others v. Minister for Civil Service* reported in [1985] 3 All England Reporter page 935. It has been held in the said decision that

A an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

B  
C  
D  
E It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in Registration by introducing a new guideline. On the contrary, Mr. Jaitley the learned counsel has submitted that the DDA and/or Central Government do not intend to challenge the decision of the High Court and the impugned memorandum of January 20, 1990 has since been withdrawn. We therefore feel that in the facts of the case it was only desirable that before introducing or implementing any change in the guideline for allotment, an opportunity to make representations against the proposed change in the guideline should have been given to the registered Group Housing Societies, if necessary, by way of a public notice.

F  
G  
H In the aforesaid facts and circumstances we do not find any reason to interfere with the impugned Judgment and this Special leave petition is therefore dismissed without any order as to cost. The applications for intervention and/or impleadment are also disposed of. Since the time schedule as indicated in the impugned Judgment of High Court could not be adhered to in view of the pendency of this Special Leave Petition, it is directed that the directions contained in the Judgment of the High Court be implemented within six months from today. We may note here that the matter was adjourned on few occasions so as to enable the Group Housing Societies aspiring to get allotments from DDA to amicably settle their disputes and to evolve a formula as may be acceptable to DDA so that on the basis of such formula allotments are to be made. Unfortunately no such amicable settlement or accepted formula could be forged.

In view of the aforesaid decision in this Special leave petition, no further order need be passed in Writ Petitions Nos. 665/91 and 667/91 and they stand disposed of. A

G.N.

Petition dismissed.