MADHYA PRADESH HOUSING AND INFRASTRUCTURE DEVELOPMENT BOARD & ORS. A

v.

B. S. S. PARIHAR & ORS.

(Civil Appeal No.1801 of 2015) B

JULY 21, 2015

[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]

Housing – Housing Scheme – By State Housing and Infrastructure Development Board – Cost of developed plots initially fixed at Rs.16,500/- per sq.mtr. as per Rules of the Board – Final demand by the Board from the allottees after fixing the sale price at Rs.30,000/- per sq. mtr. – Final demand at enhanced rate challenged – Single Judge and Division Bench of High Court quashed the enhanced/final demand – On appeal, held: The advertisement of the housing scheme in the newspaper specifically stated that the price was provisional – The final sale price was fixed in accordance with the provisions of Griha Nirman Mandal Adhiniyam and Housing Board Accounts Rules – Hence the Board was not debarred from raising the cost of construction or claiming enhanced prices for the land – However, the said enhancement is arbitrary, unreasonable, unfair and without applying the principle of the doctrine of proportionality and thus violative of Art.14 of the Constitution – The determination of final cost of the land should have been in consonance with the doctrine of proportionality and not on the basis of the market price – It would be just and proper to take into consideration the cost of developed plots at Rs.16,500/- per sq. mtr. and take escalation @10% for every year from 2007 to 2011 and ask the allottees to pay simple interest thereon – Constitution of India, 1950 – Art. 14 – Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 – s.50 – Madhya C D E F G H

A *Pradesh Housing Board Accounts Rules, 1991 – Stamp Act, 1899 – s.47(a) – Madhya Pradesh Preparation and Revision of Market Value guidelines Rules, 2000– Rules 4(2) and 75.*

Precedent – Precedential value of a judgment – Any
B *declaration or conclusion arrived at without application of mind or preceded without any reason cannot be deemed to be declaration of law of a general nature and cannot be deemed as a precedent.*

C **Partly allowing the appeals, the Court.**

HELD: 1.1 It is not correct to say that once the appellant-Board has made the allotment of the said plot of land, it is debarred from raising the cost of
D **construction or claiming enhanced prices for the said land, in view of the clauses contained in the advertisement published in the newspaper which read that the cost of the houses shown in this advertisement are totally provisional and the final fixation of the price**
E **will be done after the completion of the Scheme. Therefore, the allottees will have to pay the difference between the tentative cost and the final sale price of the land which is based on the fixation of the final cost of the land, within the stipulated time. [para 21][855-H; 856-**
F **A-C]**

1.2 Further, the said clause is also traceable to Section 50 of the Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972, wherein the appellant-Board is
G **empowered to retain, lease, sell, exchange or otherwise dispose of any land, building or other property vesting with it, situated in the area comprised in any housing Scheme or in any adjoining area. [para 22] [856-E-F]**

H **1.3 Thus, the final sale price which is fixed and intimated to the allottees is in accordance with the**

provisions of the 1972 Act, Madhya Pradesh Housing Board Accounts Rules, 1991 and the clause of the advertisement which is binding on the respondent allottees. Therefore, the High Court has committed an error in law by quashing the demand notice of the appellant-Board for the payment of the final sale price. [para 23] [858-A-B]

1.4 The provisos issued by the Central Valuation Board vide letter No. 713/Ga.La./2011 Bhopal dated 29.03.2011 for the implementation of the rates of plots of land, buildings and agricultural land in Rule 3(2) of the Rules, 2000 and the after approval of the rate of the market price proposed by District Valuation Committee Guiding Principles (Guidelines) for the year 2011-2012 for reckoning the market price of the immovable property (plots of land, building and agricultural land) situated in District Bhopal under Rule 4(2)(c) of the Rules, 2000, are forwarded by the Sub-Registrar of the Districts for the purpose of issuing directions under Section 47-A, sub-Section (1) of the Indian Stamp Act, 1899. The said valuation fixed by the District Valuation Committee under the Chairmanship of the District Collector of Bhopal is not under challenge by either the allottees or any other person. Therefore, the guiding principles for the determination of the final sale price of the plots in favour of the allottees cannot be termed as either erroneous or error in law. [para 27] [860-F-H; 861-A-B]

Tamil Nadu Housing Board v. Service Society & Anr **2011 (6) SCR 1 = 2011 (11) SCC 13;** *Delhi Development Authority* vs. *Pushpendra Kumar Jain* **1994 (3) Suppl. SCR 770 = 1994 (3) Suppl. SCC 494 – relied on.**

M.P. Housing Board v. Anil Kumar Khiwani **2005 (2) SCR 765 = 2005 (10) SCC 796 - held inapplicable.**

A **2. Any declaration or conclusion arrived at without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature and the same cannot be deemed as a precedent. [para 27] [861-C-D]**

B *Bihar School Education Board v. Suresh Pd. Sinha* **(2009) 8 SCC 483;** *State of U.P. v. Synthetics & Chemicals Ltd.* **(1991) 4 SCC 139 – relied on**

C *Tamil Nadu Housing Board v. Service Society & Anr* **2011 (6) SCR 1 = 2011 (11) SCC 13 – referred to**

3.1. The appellant-Board is entitled to fix the final cost of the land and the same is legal and valid. However, D **the same has been done arbitrarily, unreasonably, unfairly and without applying the principle of the doctrine of proportionality. The determination for the final price of the plots allotted to the allottees must be on the basis of the appellant-Board Rules read with the relevant** E **aspects namely, the Collector's Guidelines, the 1972 Act and the 1991 Rules, for the purpose of determination of the market value of the land. A statutory duty is cast upon the appellant-Board which is governed by the provisions of the Act and Rules and the appellant-Board** F **being the statutory Board is amenable to Article 14 of the Constitution of India. The determination of the final cost of the land in dispute must be in consonance with the doctrine of proportionality but not on the basis of the market price, i.e. fixed by the Committee for the** G **determination of guidance value of the immovable property in the District which would be arbitrary, unreasonable and unfair. [para 31] [882-A-E]**

3.2 As per the advertisement published by the H **appellant-Board, the estimated cost of the House of HIG**

was Rs.40 lakhs and in view of the approved minimum bid rates, the costs of the aforesaid type of houses were likely to increase by Rs.9.53 lakhs. The said value is for the final determination of the revised estimated cost of house which is taken into consideration by applying the Collector's guidelines, the same will be arbitrary and unreasonable. Therefore, the doctrine of proportionality must come into play for the determination of the final price of the allotted plot, keeping in view the relevant factors namely, the escalation of the cost of the building materials and the cost of land which are re-determined as the land is acquired by the State Government in favour of the appellant-Board and the State Government will have to pay the enhanced compensation of the land to the land owners. The relevant factor to be borne in mind for the purpose of re-determination of the cost of the land is that the relevant period from the date of advertisement in the year 2007 to 2010 should be taken into consideration. [para 32] [882-F-H; 883-A-C]

3.3 The demand made by the appellant-Board from the allottees after the cost of the land was determined at Rs.30,000/- per sq. mtr. is near about double the cost of the developed plots for the Duplex and Triplex houses which were earlier fixed at Rs.16,500/- as per the Rules of the Board. There is no justification on the part of the appellant-Board to fix the price of the land at Rs.30,000/- per sq. mtr. and placing the said demand on the constructed HIG houses, from the respondent-allottees would be most unreasonable and unfair. Therefore, by maintaining the balance between the figure Rs.16,500/- and Rs.30,000/-, it would be just and proper to take into consideration the cost of the developed plots at Rs.16,500/- per sq. mtr. and take the escalation at the rate of 10% for every year from 2007 to 2011 and ask the

respondent-allottees to pay simple interest on the said sum. The same would be in conformity with the doctrine of proportionality and it will pass the test of reasonableness and fairness. [para 33] [883-D-H]

Coimbatore District Central Coop. Bank v. Employees Association **2007 (5) SCR 430 = 2007 (4) SCC 669**; *Teri Oat Estates (P) Ltd. v. U.T. Chandigarh* **2003 (6) Suppl. SCR 1235 = 2004 (2) SCC 130**, *Om Kumar v. Union of India* **2000 (4) Suppl. SCR 693 = 2001 (2) SCC 386**; *State of U.P. v. Sheo Shanker Lal Srivastava* **2006 (2) SCR 656 = 2006 (3) SCC 276 – relied on.**

Case Law Reference

1994(3)Suppl.SCR 770	**relied on**	**para 15**
2011 (6) SCR 1	**relied on**	**para 24**
(2009) 8 SCC 483	**relied on**	**para 27**
(1991) 4 SCC 139	**relied on**	**para 27**
2005 (2) SCR 765	**held inapplicable**	**para 27**
2007 (5) SCR 430	**relied on**	**para 29**
2003(6)Suppl. CR 1235	**relied on**	**para 29**
2000(4)Suppl.SCR 693	**relied on**	**para 29**
2006 (2) SCR 656	**relied on**	**para 29**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1801 of 2015.

From the Judgment and Order dated 31.07.2014 of the High Court of Madhya Pradesh, Principal Seat at Jabalpur

in Writ Appeal No. 1565 of 2013. A

WITH

Civil Appeal Nos. 1802-1803 of 2015.

Sunil Gupta, Sushil Dutt Salwan, Nikunj Dayal, Payal Dayal, Nipun Goel, Pramod Dayal for the Appellants. B

M. L. Lahoty, Paban K. Sharma, Gargi B. Bharali, Hemant Shrivastava, Himanshu Shekhar for the Respondents. C

The Judgment of the Court was delivered by

V. GOPALA GOWDA, J. 1. Civil Appeal No. 1801 of 2015 by special leave has been filed against the impugned judgment and order dated 31.7.2014 passed in Writ Appeal No. 1565 of 2013 by the High Court of Judicature at Madhya Pradesh at Jabalpur, whereas C.A. Nos. 1802-1803 of 2015 by special leave have been filed against the impugned judgment and order dated 31.7.2014 passed in Writ Appeal Nos. 1550 of 2013 and 1563 of 2013 by the same High Court. In both the matters, the dispute relates to the fixation of the price of the under construction 36 Duplex/Triplex HIG Houses, situated in "Riviera Towne", Bhopal, by the appellant-Madhya Pradesh Housing and Infrastructure Development Board (for short "the appellant-Board") and the method adopted by them for fixing the price of the properties in dispute and linking the cost price of the land with the Collector's guidelines on the date of completion of the project in the case of Self Financing Scheme. The High Court dismissed the writ appeals filed by the appellant-Board and quashed the enhanced/final demand for price fixation of land by the appellant-Board. D E F G

2. The brief facts of the case are stated hereunder to H

A appreciate the rival legal contentions urged on behalf of the parties:

An advertisement was published on 9.11.2007 in the local daily newspaper 'Dainik Bhaskar' regarding the Housing B Scheme which was floated by the appellant-Board for the allotment of 36 residential houses for the employees of the State Government and the State Public Sector Undertaking under the name of "Riviera Towne" in Bhopal with the following terms and conditions :-

C

1.	Application forms for residential houses in Riviera Towne, Bhopal can be purchased at a cost of Rs.250/- from the Punjab National Bank, R.S.S. Market Panch Bus Stop, Bhopal on all working days between 21.11.2007 and 7.12.2007 and Registration Amount/Banker's Cheque/Demand Drafts can be deposited in the above bank on all working days till 7.12.2007.
2.	In case the number of applications are more than the number of premises advertised for sale, the registration will be done through a system of lottery which will be held at 4.00 pm on 14.12.2007 in the office of Estate Officer.
3.	Preference in registration will be given to those who pay the total estimated amount in one lump sum.
4.	Apart from the sale price, other charges and maintenance fee shall be payable as per the Board rules.
5.	Once registration is sanctioned under Self Financing Scheme, the applicants have to pay the balance amount in instalments as per the intimation given by the Board.
6.	Costs of the houses shown in this advertisement are totally provisional and the final fixation of the price will be done after completion of the Scheme. Allottees have to pay the difference of tentative cost and final sale price in fixation of final cost on intimation within the time stipulated.

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7.	Other taxes and lease rent shall be payable as per rules.
8.	Applications for registration are invited from the officers and employees of various departments of the Madhya Pradesh Government and undertakings Institutions. Reservation of houses will be in accordance with the rules.
9.	Even after publication of two advertisements for registration of the house, if some houses still remain available, then application will be invited from General Category as per rules.
10.	Other terms and conditions apply.

Type of House	No.	Approx. carpet area in Sq. mtrs.	Approx. plot area in Sq. mtrs.	Estimated Cost (in lakhs)	Regn. Amount (in lakhs)
Nice Duplex	18	184.57	150 sq.mtrs.	40.00	4
Nice Triplex	14	228.25	150 sq.mtrs.	45.00	4.50
Nice Duplex Corner	4	223.51	223 sq.mtrs.	53.00	5.50

XXX XXX

3. The appellant-Board held the draw of lots for the allotment of the said houses in dispute and the successful applicants were notified by the appellant-Board vide communication letter dated 20.12.2007 about the allotment of the said houses in their favour. The appellant-Board also took the administrative approval on 3.1.2008 for the construction of 36 houses of the disputed properties. The appellant-Board also constituted a Price Fixation Committee

A in its 199th meeting for the fixation of the rational price for the said houses. They also issued two Circulars dated 30.9.2008 and 24.10.2008 relating to the fixation of cost of the said properties in dispute.

B 4. The Price Fixation Committee worked out the prices of the said 36 residential houses as mentioned below :-

	Total Flats-18	**Total Flats-14**	**Total Flats-4**
C	Plot area -150 sq. mts.	Plot area-150 sq. mts.	Plot area-223 sq. mts.
	Built up area-184.57 sq.mts.	Built up area - 228.25 sq. mts	Built up area - 223.51 sq. mts.
D	Cost - Rs.49,53,000/-	Cost- Rs.55,91,000/-	Cost- Rs.66,17,000/-

E Upon getting the tentative cost of construction of the houses and on the basis of the revised calculations and price determination of the said properties in dispute and after the receipt of tender, the demand letters were issued on 18.6.2009 to the respondent-allottees requesting them to F submit their consent or dissent to the enhanced estimated cost in writing within 15 days from the date of the issuance of the letter.

5. The construction of the houses started from G 30.6.2009 and almost 90% of the allottees gave their consent to the revised cost of the properties in dispute as determined by the appellant-Board on the report of the Price Fixation Committee.

H 6. The appellant-Board, vide letter dated 7.7.2009,

sought for consent from the remaining allottees-respondents, who had not given their consent with regard to the revised fixation of prices on the said disputed properties, stating thereby that if they fail to do so, they will not be allotted the houses and the registration amount that they had earlier given towards the allotment of the houses will be refunded to them with interest as per the rules of the Madhya Pradesh Co-operative Societies Act, 1960 (hereinafter called as "the Societies Act") and Madhya Pradesh Co-operative Societies Rules, 1962(hereinafter called as "the Rules").

7. On 7.10.2009, the appellant-Board had informed that all the allotments that were made to the respondents subsequent to the issuance of the circulars dated 30.9.2008 and 24.10.2008, will be final and they will be bound by the said circulars. The draw of lots was conducted on 22.12.2009 for the allocation of house numbers to the eligible applicants. In the meeting held on 2.12.2011, it was decided by the appellant-Board that all the allotments made to the respective applicants will be governed by the notifications/circulars regarding the cost of fixation of the properties in dispute and also according to the appellant-Board.

8. The Price Fixation Committee in its meeting held on 9.12.2011 and in its report dated 15.12.2011, fixed the cost with regard to the houses to be allotted under the said "Riviera Towne" Scheme. In the report, the commencement of the Scheme is to be considered to be from the date of the Work Order and not from the date of the advertisement. Thereafter, taking into consideration the final cost determined by the Price Fixation Committee, the final demand letters were issued to the successful allottees on 24.12.2011.

9. Being aggrieved by the action of the appellant-Board, the respondents filed Writ Petition No.15983 of 2012 before

A the learned single Judge of the High Court of Madhya Pradesh, challenging the decision of the Price Fixation Committee, whereby the appellant-Board has directed the respondents to deposit the price for the said houses allotted to them at a highly enhanced rate which is 300% more than
B the original price of the said properties in dispute. The grievance of the respondents was that they had applied for the said Scheme and had been allotted houses in the year 2007 at the price prevalent at the relevant period of time, subject to reasonable escalation. But at the time of the
C delivery of possession of the said properties in dispute the appellant-Board has demanded the price of Rs.30,000/- instead of Rs.9,000/- per sq. mtr. which is highly unjustified on its part. The respondents have further contended that
D the appellant-Board has wrongly taken into consideration the subsequent guidelines and notifications issued by the Collector, notifying the price of the land for registration and the stamp duty which is contrary to the law laid down by this Court in a catena of cases.

E 10. The learned single Judge disposed of the said writ petition on 24.9.2012, and directed the appellant-Board to consider the representation of the respondents and the legal opinion obtained by them and decide the matter in
F accordance with the decisions of this Court in a catena of cases, after giving the respondent-allottees due opportunity of being heard.

11. Though various representations were filed before the appellant-Board by the allottees with regard to the fixation
G of the cost of the properties in dispute, the Commissioner of the appellant-Board by order dated 8.3.2013, after considering the representations of the respondent-allottees and by referring to the various circulars regarding the cost
H fixation, rejected the representations of the allottees.

12. The said action of the Commissioner of the appellant-Board led the respondents to file Writ Petition No.5690 of 2013 and connected writ petitions before the learned single Judge of the High Court. During this period 3 applicants did not make the initial payment of Rs.4 lakhs i.e. 10% of the advertised tentative cost which resulted in the cancellation of their registration to the said properties and their duplex houses were put to auction. A B

13. The learned single Judge of the High Court disposed of the Writ Petition No.5690 of 2013 along with the other connected writ petitions vide its common order dated 21.11.2013. The learned single Judge allowed the writ petitions of the respondents and directed the appellant-Board to fix the price of the land as it existed on the date of issuance of the allotment letter and consequently quashed the land price determined by the appellant-Board which was based on the guidelines of the Collector. C D

14. Being aggrieved by the order dated 21.11.2013, the appellant-Board filed Writ Appeals before the Division Bench of the High Court which were dismissed vide its common order dated 31.7.2014. The Division Bench upheld the findings of the learned single Judge, thereby quashing the enhanced/final demand raised by the appellant-Board. Hence, these appeals have been filed by the appellant-Board, urging various legal grounds and contentions and prayed to set aside the impugned order passed by the High Court. E F

15. Mr. Sunil Gupta, the learned senior counsel appearing on behalf of the appellant-Board has relied upon the judgment of this Court in the case of ***Delhi Development Authority*** *v.* ***Pushpendra Kumar Jain***[1], in support of his case, wherein this Court has held that the allottee was bound G H

[1] (1994) Supp (3) SCC 494

A to make the deposit at the enhanced rate as per the demand raised by the D.D.A. if he wanted to secure the flat. It was further held that an allottee gets an indefeasible right to allotment only on the date of communication of allotment and not on the date of draw of lots which is only a process to B identify or select the persons for allotment and not the allotment itself. It was further held that when the cost was enhanced prior to the allotment letter, demand of the enhanced rate was justified. The learned senior counsel has contended that the impugned order of the High Court was C not right as the same is contrary to the case of ***Delhi Development Authority*** (supra), which is squarely applicable to the fact situation of the instant case and the High Court has failed on its part by ignoring the same and D passing the order against the appellant-Board.

16. It has been further contended by the learned senior counsel that the High Court has gravely erred in determining the price of the properties in dispute at a rate prevalent during the period 2007-2008 or 2008-2009, as the appellant-Board E has sold and executed the sale deeds of 1718 flats and 302 plots as per the guidelines of the Collector issued from time to time which would become applicable to the allottees as well.

F 17. The learned senior counsel has further contended that the fixation of the cost of the properties in dispute has been done in accordance with the Scheme, the rules and the policy of the appellant-Board and the so-called allotment made in favour of the allottees is not an allotment but only a G registration granted to them which the High Court has misconstrued as allotment of the said land.

18. On the contrary, the learned senior counsel appearing on behalf of the respondents has sought to justify H the impugned judgment and order contending that the

judgment of the High Court is perfect and justified. He has contended that on the issue of fixing the price of the land, the High Court has rightly held that the price or cost of the said land should be in accordance with the price or the cost of land which existed on the date of allotment.

19. He has further contended that the High Court has rightly held that the date of allotment is the date on which the offer of the respondents was accepted and their applications were registered and the allotments to the land were made accordingly, which is clear from a bare perusal of the letters indicating the acceptance of registration in allotment.

20. The learned senior counsel has further contended that the main dispute is with regard to the difference of the amount of the cost of the land that is being demanded by the appellant-Board as per the Collector's guidelines prevailing in the year 2011-12 and the actual cost that existed on the date of allotment of the said land. The applicants have already paid the entire cost as per the demand of the appellant-Board and have in fact paid 10% extra towards the cost of the said property and despite the same, the property has not been handed over to them which is a grave miscarriage of justice and the respondents have been suffering for a long time.

21. We have heard both the parties. On the basis of the aforesaid rival legal contentions urged on behalf of the parties and on perusal of the findings recorded by the High Court in its impugned judgment and order, we have to answer the points of dispute on the basis of the evidence produced on record. We record our reasons hereunder:-

The contentions urged on behalf of the respondents that once the appellant-Board has made the allotment of

A the said plot of land, it is debarred from raising the cost of construction or claiming enhanced prices for the said land, is wholly untenable in law in view of the clauses contained in the advertisement published in the newspaper *Dainik Bhaskar* dated 09.11.2007, which read that the cost of the B houses shown in this advertisement are totally provisional and the final fixation of the price will be done after the completion of the Scheme. Therefore, the allottees will have to pay the difference between the tentative cost and the final sale price of the land which is based on the fixation of the C final cost of the land, within the stipulated time.

Therefore, in view of the aforesaid clause, the allotment of the said plot of land in favour of the respondent-allottees is only provisional in nature and the same would be subject D to the final fixation of the price of the land that will be done after the completion of the Scheme as the said clause is binding upon the respondent- allottees.

22. Further, the said clause is also traceable to Section E 50 of the Madhya Pradesh Griha Nirman Mandal Adhiniyam, 1972 (in short 'the Act, 1972'), wherein the appellant-Board is empowered to retain, lease, sell, exchange or otherwise dispose of any land, building or other property vesting with it, situated in the area comprised in any housing Scheme or F in any adjoining area. The Madhya Pradesh Housing Board Accounts Rules, 1991, (in short "the Rules, 1991") were framed in this regard, the relevant provisions of which are necessary to be extracted hereunder:

G **"5.4.SALE PRICE**

Sale price of sites and buildings shall be separately determined in accordance with the guidelines issued by the Board. But where yield a sale price for any reason H different from cost price determined under Rule 5.3.2

and 5.3.3 (e.g. due to adoption of different rates of overheads for different income groups, charging premium from higher income groups for appreciation in land value, grant of concessions to Board's employees adoption of average expenditure on project instead of year wise expenditure for calculating overheads on interest, adoption of uniform rate of interest of the entire construction period instead of varying rates of interest for separate years), sales may be brought to account in the revenue section of project accounts without prejudice to the operation of Rules 5.3.2 and 5.3.3 (These rules deal with account adjustment in the expenditure section of project account upto the state of recording under the account head "cost of Sales"). Accordingly account adjustment regarding capitalization of overheads, transfer of assets from Divisions to Estate Management and incorporation of costs in the account "Cost of Sales" in the ledgers of Estate Management shall be carried out immediately on completion of project and not held up till sale price approved by the Competent Authority.

5.7 LAND

5.7.1 Land acquired shall be brought to account on accrual basis, land made over to the Board free of cost shall be brought to account at nominal price.

XXX XXX XXX

5.7.4 For the purpose of assessing the cost of a project, i.e., debiting "Cost of Sales" as well for the purpose of valuation of closing stock in Final Accounts, appreciation in land value shall be ignored. The Board may, however, take it into account for the purpose of determination of sale price."

A 23. The final sale price which is fixed and intimated to the allottees is in accordance with the provisions of the Act 1972, the Rules, 1991 and the clause of the advertisement which is binding on the respondent allottees. Therefore, the High Court has committed an error in law by quashing the B demand notice of the appellant-Board for the payment of the final sale price and allowing the writ petitions of the respondent-allottees without considering the terms and conditions of the advertisement and the statutory provisions of the Act and the Rules towards the fixation of the cost of C the land. On this ground, the impugned judgments of both the learned single Judge and the Division Bench of the High Court are liable to be quashed and set aside.

24. The learned senior counsel on behalf of the D appellant-Board has rightly pointed out the concurrent findings recorded in the impugned judgment of the Division Bench, which has referred to the judgment of the learned Single Judge, wherein he has held that once the allotment of the said plot of land is made, the appellant-Board is E denuded of its power to seek enhanced cost of land based on the Collector's guidelines, as erroneous in law. He has also relied on the principles that have been laid down in various cases of this Court including the cases of ***Tamil Nadu Housing Board*** *v.* ***Service Society & Anr***[2] and ***Delhi Development Authority*** *(supra).* He has rightly pointed out F that the said conclusions of both the learned single Judge and the Division Bench of the High Court are erroneous in law and the same is a perverse finding of fact for the reason G that they have misconstrued the registration of the applications and the allotments made with respect to the land in dispute which is in accordance with the clause published in the advertisement. Reliance has been placed in the case of ***Delhi Development Authority*** (supra) which H reads thus:

[2] (2011) 11 SCC 13

"8.....No provision of law also could be brought to our notice in support of the proposition that mere draw of lots vests an indefeasible right in the allottee for allotment at the price obtaining on the date of draw of lots. In our opinion, since the right to flat arises only on the communication of the letter of allotment, the price or rates prevailing on the date of such communication is applicable unless otherwise provided in the Scheme. If in case the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment. We see no unfairness in the above procedure."

25. The conditions stipulated in the advertisement inviting applications from the applicants and the provision provided under Section 50 Rule (5)(iv) of the Act of 1972 and Rules 5.7.1 and 5.7.4 of the Rules, 1991 would make it clear that the law laid down in the ***Delhi Development Authority*** *(supra)* case is aptly applicable to the fact situation of the instant case. The same has not been considered by the High Court while passing its impugned order. On this ground also, the impugned judgment is liable to be set aside.

26. The learned senior counsel on behalf of the appellant-Board has rightly pointed out that the determination of the sale price of the flats allotted in favour of the respondent-allottees is based on the cost price fixed as per the guidelines provided by the Collector from time to time for the relevant year for the final allotment. He has further pointed out that the total number of allottees who have applied to the advertisement through the procedure of drawing the lottery for the allotment of flats in their favour are 2531. The allottees who have accepted the final cost are 1472. The allottees who have not accepted the final cost and filed a petition against the same are 84. There are 975

A applicants who have vacant houses and are awaiting the decision of the courts in other cases but they have neither accepted nor refused the final cost fixation. Apart from the said factual position, about 700 HIG & MIG and 1500 LIG and EWS housing units would be further affected by the B impugned judgment of the High Court. The legal issue that is present for our determination is, whether the demand of the final sale price which has been fixed by the appellant-Board in terms of the conditions stipulated in the advertisement with regard to the land in dispute for the year C 2010-2011 which has been done on the basis of the "Market Price Guiding Principles, District, Bhopal" by the Collector under Section 47(a) of the Indian Stamp Act, 1899 (Act NO. 2 of 1899), read with Section 75 of the Madhya Pradesh Preparation and Revision of Market Value Guidelines Rules, D 2000 (hereinafter called as "the Rules, 2000"), framed by the State Government for the determination of the market price of immoveable property and the tier review under Rule 4(b) of Rules, 2000, the proposal of rates of market price for E the year 2011-2012, submitted by the sub-District Valuation Committee before the District Valuation Committee is legal and valid?

27. The provisos issued by the Central Valuation Board F vide letter No. 713/Ga.La./2011 Bhopal dated 29.03.2011 for the implementation of the rates of plots of land, buildings and agricultural land in Rule 3(2) of the Rules, 2000 and the after approval of the rate of the market price proposed by District Valuation Committee Guiding Principles (Guidelines) G for the year 2011-2012 for reckoning the market price of the immovable property (plots of land, building and agricultural land) situated in District Bhopal under Rule 4(2)(c) of the Rules, 2000, are forwarded by the Sub-Registrar of the Districts for the purpose of issuing directions under Section H 47-A, sub-Section (1) of the Indian Stamp Act, 1899. The

said valuation fixed by the District Valuation Committee under the Chairmanship of the District Collector of Bhopal is not under challenge by either the allottees or any other person. Therefore, the guiding principles for the determination of the final sale price of the plots in favour of the allottees cannot be termed as either erroneous or error in law. Further, the learned senior counsel for the appellant-Board has placed reliance upon the judgment of this Court in the cases of ***BSEB v. Suresh Pd. Sinha***[3] and ***State Of U.P. v. Synthetics & Chemicals Ltd.***[4] in support of the proposition of law upon the principal of binding precedents, wherein this Court has held that any declaration or conclusion arrived at without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature and the same cannot been deemed as a precedent.

The learned senior counsel on behalf of the appellant-Board has further rightly placed reliance upon the judgment of this Court in the case of ***Tamil Nadu Housing Board*** *(supra)* in support of his legal submission wherein, this Court has held thus:

> **"18.** There is no term or provision in the contract that if the Board does not determine the final price within three years from the date of allotment, the Board would lose the right to determine the final price thereafter or that the tentative price would become the final price. If on account of delay in determination of compensation for land acquisition or delay on the part of the contractors in completing the development works or construction, or if there are any encroachments or if there are pending claims of contractors regarding development or construction, the Board would not be able to determine the final cost within three years. But that did not mean

[3] (2009) 8 SCC 483
[4] (1991) 4 SCC 139

A that the tentative cost would become the final cost in the absence of such a provision in the letter of allotment or lease-cum-sale agreement..

20. Clause 17 states that except the fixation of price B with reference to the compensation finally awarded by the courts, the Board should fix the price of the LIG house after taking into consideration the development charges, cost of amenities and cost of buildings within three years from the date of allotment. If the final price C is so fixed, thereafter what could be increased is only the land cost component on account of any increase in compensation that may be awarded by the courts. If the Board had earlier fixed the final price, the Society's contention might have merited acceptance as the D component of price with reference to cost of development and amenities and cost of building would have attained finality on account of such final determination and only the increase on account of award of compensation for land could be demanded E after such determination of final price. But where the final price has not been determined at all, for whatsoever reason, and the final cost was being determined for the first time, the allottee cannot contend that only the increase on account of the land, and not F the increase on account of development cost and construction cost, could be demanded. Where the final price has not been fixed, the Board could, after ascertainment of various costs, determine the final price even after three years, and the finality in regard to cost G of development and amenities and the cost of construction, referred under Clause 17, would not apply.

30. Whenever allotments are made even before the completion of the development of land and H

construction, necessarily the cost that is shown by the authority or the Board will be tentative. In regard to the land cost, there may be claims for enhancement of compensation before the Reference Court with appeals to the High Court and this Court. Sometimes the entire process may take 10 to 15 years and till that process is concluded the final cost of the land cannot be determined. An allottee cannot therefore say that the authority cannot increase the cost after 12 years.

32. Therefore, an allottee cannot contend that the increase, if any, should be determined within three years and if the increase is not so determined, the tentative cost would itself become the final cost. Such an interpretation of Clause 17 would be illogical and unreasonable. If the Board is able to show that there was sufficient cause for the delay in deciding the final price and that it was beyond its control to determine the final cost earlier (or within three years) it will be entitled to final cost even if the claim is delayed by a few years. The allottee cannot refuse to pay it merely on the ground of delay.

37. We find that the allottees/Society do not dispute that the cost of the land increased considerably on account of enhancement of compensation. The Board showed that the total cost of land inclusive of interest up to 31-3-1987 was Rs. 35,02,727 for 8 acres and 16,422 sq ft. The said figure was broadly accepted by the Society, in its calculation sheet. The Society arrived at the cost of a plot measuring 1040 sq ft as Rs. 3500 (paid as deposits) plus Rs. 8634 which aggregates to Rs. 12,134. But as noticed above, this is the proportionate cost worked out for 1040 sq ft out of the total cost of an extent of 33,64,902 sq ft (8 acres and

16,422 sq ft). It is not possible for the allottee to contend that he will pay only the proportionate actual cost of his plot. If the cost of the plot has to be worked out, the cost relating to proportionate share in the common/ service areas (roads, parks, playgrounds, etc.) should be added. That means at least addition of another 40% to the price worked out for the actual extent of the plot. With reference to the cost worked out by the Society, if 40% is added, the increased cost of plot would be around Rs. 16,987.60. According to the Society the original tentative cost for the plot was Rs. 3000. Therefore the increase in cost would be around Rs. 14,000. What is demanded as additional amount is Rs. 16,770. The difference is hardly Rs. 2770 which may be attributable to the increase in the cost of development/construction. It cannot therefore be said that the amount claimed under the demand notice dated 21-5-1988 is excessive or unreasonable. Neither party has given the full data or facts or accounts. The allotment was made 35 years back. No purpose would be served by remitting the matter for re-examination. In the facts and circumstances, we are satisfied that the demand is not open to challenge."

In view of the aforesaid decisions of this Court, both the learned single Judge and the Division Bench of the High Court have misconstrued the terms and conditions stipulated in the advertisement and have erroneously applied the same to the fact situation of the present case and came to the erroneous conclusion by placing reliance upon the judgment of this Court in the case of ***M.P. Housing Board*** *v.* ***Anil Kumar Khiwani***[5], wherein this Court by referring to the observations made by the Division Bench in its judgment at paras 6,7,8,9,10,11,12, 16 and 17 held that the Board was

[5] (2005) 10 SCC 796

not entitled to raise the price of 71 lakhs particularly, when it was guilty of delaying the project. The strong reliance placed upon the aforesaid judgment by both the learned single Judge and the Division Bench of the High Court in holding that the appellant-Board is not empowered to determine the final cost of the properties in dispute is wholly erroneous in law as the said judgment does not deal with the role and the power of the appellant-Board to determine the final price of the allotted plot which power is in conformity with the provisions of Section 50 of the Act of 1972 and the relevant rules referred to *supra* and the terms and conditions of the advertisement. Therefore, the said judgment does not have the binding precedent for the proposition of law that the appellant-Board does not have the power to re-determine the final price of the allotted properties after the applications of the allottees were registered. In this regard, the learned senior counsel for the appellant-Board has rightly placed reliance upon the judgment of this Court in the case of ***State of U.P. v. Synthetics and Chemicals Ltd.*** (supra), the relevant paras of which read thus:

> **"41.** Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind.". In *Lancaster Motor Company (London) Ltd.* v. *Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial

A words of the rule and without any citation of the authority'. It was approved by this Court in *Municipal Corporation of Delhi* v. *Gurnam Kaur*. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse
B to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated
C by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not *ratio decidendi*. In *B. Shama Rao* v. *Union Territory of Pondicherry* it
D was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be
E declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

F

42. Effort was made to support the conclusion, indirectly, by urging that the State having raised same objections by way of review petition and the same having been rejected it amounted impliedly as providing
G reason for conclusion. Law declared is not that can be culled out but that which is stated as law to be accepted and applied. A conclusion without reference to relevant provision of law is weaker than even casual observation. In the order of Brother Thommen, the extracts from
H the judgment of the Constitution Bench quoted in

extenso demonstrate that the question of validity of levy of sales and purchase tax was neither in issue nor was it raised nor is there any discussion in the judgment except of course the stray argument advanced by the learned Attorney General to the following effect:

"But alcohol not fit for human consumption are not luxuries and as such the State legislatures, according to Attorney General, will have no power to levy tax on such alcohol."

Sales tax or purchase tax under Entry 54 is levied on sale or purchase of goods. It does not contemplate any distinction between luxury and necessity. Luxuries are separately taxable under Entry 62. But that has nothing to do with Entry 54. What prompted this submission is not clear. Neither there was any occasion nor there is any constitutional inhibition or statutory restriction under the legislative entry nor does the taxing statute make any distinction between luxuries and necessities for levying tax. In any case the bench did not examine it nor did it base its conclusions on it. In absence of any discussion or any argument the order was founded on a mistake of fact and, therefore, it could not be held to be law declared. The bench further was not apprised of earlier Constitution Bench decisions in *Hoechst Chemicals* v. *State of Bihar* and *Ganga Sugar Mill* v. *State of U.P.* which specifically dealt with the legislative competence of levying sales tax in respect of any industry which had been declared to be of public importance. Therefore, the conclusion of law by the Constitution Bench that no sales or purchase tax could be levied on industrial alcohol with utmost respect fell in both the exceptions, namely, rule of *sub-silentio* and being in *per incuriam*, to the binding authority of the precedents."

A Further reliance has been placed upon the decision of this Court in the case of ***Bihar School Examination Board v. Suresh Prasad Sinha,*** (supra), the relevant paras of which read thus:

B **"18.** The courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was made. In *CIT* v. *Sun Engg. Works (P) Ltd.*

C "*39.* ... It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be D read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while E applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this F Court, to support their reasonings."

19. It is also necessary to keep in mind the following principles laid down in *Govt. of Karnataka* v. *Gowramma* with reference to precedential value of decisions:

G

"*10.* '*12.* ... Reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. H It is not everything said by a Judge while giving [a]

judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates: (*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See *State of Orissa* v. *Sudhansu Sekhar Misra* and *Union of India* v. *Dhanwanti Devi.*) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In *Quinn* v. *Leathem* the Earl of Halsbury, L.C. observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since *the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case* in which such expressions are found and a case is only an authority for what it actually decides.'

A B C D E F G H

A *11. '15. ... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as*
B *provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated.* Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions
C of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not
D to be interpreted as statutes.

* * *

18. The following words of Lord Denning in the matter
E of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may
F alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad
G resemblance to another case is not at all decisive.

* * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood
H

and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it." A

20. In *Sarva Shramik Sanghatana (KV)* v. *State of Maharashtra* this Court cited the following passage from *Quinn* v. *Leathem* with approval: B

"... Now, before discussing *Allen* v. *Flood* and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, *since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but [are] governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all." C D E F

28. Applying the guideline rates in relation to the valuation of the land in accordance with Circular No. 21 of 2008 dated 24.10.2008, for the determination of the cost of the L.I.G./E.W.S. buildings, the Board has passed the following resolution:- G

"Following decision has been taken by the competent authority in connection with the buildings of all the H

A categories of E.W.S./L.I.G. in all the districts of Madhya Pradesh whose registration has been carried out before 19th of December, 2011 and whose final determination of the value is effected the Circular No.21/2008 dated 24.10.2008:-

B

(i) From the date of coming into force of the Circular of the Board vide No. 21/08 dated 24.10.2008 and in between the period of coming into force of the Circular No.15/11 dated 19.12.2011 the cost of the land in the C final valuation of the buildings of E.W.S/L.I.G. duly advertised, the value taken in the initial determination of the value, be determined.

(ii) In the final determination of the value of the D aforesaid E.W.S./L.I.G. buildings, following shall be the criteria/ingredients:-

(a) The cost of the land which was determined at the time of the registration.

E

(b) Actual development expenditure incurred on the plot since after the registration.

(c) Total construction cost.

F

(d) Supervision fees (At the rate prevalent at the time of the registration).

(e) Penal interest against the remaining instalments as per the rules of the Board (at the rate prevalent G from time to time).

(f) Other charges as per the rules of the Board....."

The said guidelines have been laid down by the Development Board during the pendency of this proceeding.

H

The submission made by the learned senior counsel on behalf of the allottees is that the said benefit may be extended to these allottees involved in these proceedings. The rates with regard to the cost of flats as on the date of the publication of the advertisement in November, 2007, the cost of the flats fixed in the year June, 2009 and the total final demand for the cost of the flats in December, 2011 are furnished in the table which are extracted herein below for our perusal:-

Type of House	Advt. Cost (In Lakhs) In November, 2007	Cost as told in June, 2009 (In Lakhs)	Total Final Demand in Dece., 2011 (In Lakhs)
Nice Duplex	40.00	49.53	81.73
Nice Triplex	45.00	55.91	88.97
Nice Duplex Corner	53.00	66.17	120.44

29. Dr. Rajeev Dhawan, the learned senior counsel for the respondent-allottees in C.A. Nos. 1802-1803 of 2015, has placed strong reliance upon Article 14 of the Constitution of India and upon the judgment of this Court in the case of ***Coimbatore District Central Coop. Bank v. Employees Association***[6], in support of the proposition of law that the appellant-Board while exercising its power to fix the final rates of the allotted plots by invoking the clause contained in the notification issued by it for inviting applications, wherein it has retained its right to determine the final price of the allotted plot, must pass the test of the doctrine of proportionality in determining the final price of the plot. He has placed strong reliance in support of his case upon the

[6] (2007) 4 SCC 669

A following decisions of this Court in the cases of ***Coimbatore District Central Coop. Bank*** *(supra)*, ***Teri Oat Estates (P) Ltd. v. U.T. Chandigarh***[7], ***Om Kumar v. Union of India***[8] and ***State of U.P. v. Sheo Shanker Lal Srivastava***[9] and has contended that the same have to be applied to the fact
B situation of the present case with regard to the legal principle of doctrine of proportionality. The relevant paras of the above mentioned judgments are stated hereunder:

In ***Coimbatore District Central Coop. Bank*** *(supra)*,
C this Court has held thus:

> **"17.** So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come
> D to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to
> E law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".
>
> F
>
> **18.** "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence
> G of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of

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H [7] (2004) 2 SCC 130
[8] (2001) 2 SCC 386
[9] (2006) 3 SCC 276

permissible priorities. A

19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests B and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [*Judicial Review of Administrative Action* (1995), pp. 601-05, para 13.085; *see also* Wade & Forsyth: *Administrative* C *Law* (2005), p. 366.]

20. In *Halsbury's Laws of England* (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:

D

"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are E wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage F of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.""

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In ***Teri Oat Estates (P) Ltd.*** *(supra),* it was held as under:

"46. By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, H

A 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
B 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
C persons keeping in mind the purpose which they were intended to serve".

49. Ever since 1952, the principle of proportionality has been applied vigorously to legislative and administrative
D action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, this Court had occasion to consider whether the restrictions imposed by legislation were
E disproportionate to the situation and were not the least restrictive of the choices. In cases where such legislation is made and the restrictions are reasonable; yet, if the statute concerned permitted administrative authorities to exercise power or discretion while
F imposing restrictions in individual situations, question frequently arises whether a wrong choice is made by the administrator for imposing the restriction or whether the administrator has not properly balanced the fundamental right and the need for the restriction or
G whether he has imposed the least of the restrictions or the reasonable quantum of restrictions etc. In such cases, the administrative action in our country has to be tested on the principle of proportionality, just as it is done in the case of main legislation. This, in fact, is
H being done by the courts. Administrative action in India

affecting the fundamental freedom has always been tested on the anvil of the proportionality in the last 50 years even though it has not been expressly stated that the principle that is applied is the proportionality principle. A

B

50. In *Om Kumar*, however, this Court evolved the principle of primary and secondary review. The doctrine of primary review was held to be applicable in relation to the statutes or statutory rules or any order which has the force of statute. The secondary review was held to be applicable inter alia in relation to the action in a case where the executive is guilty of acting patently arbitrarily. This Court in *E.P. Royappa* v. *State of T.N.* noticed and observed that in such a case Article 14 of the Constitution of India would be attracted. In relation to other administrative actions as for example, punishment in a departmental proceeding, the doctrine of proportionality was equated with Wednesbury unreasonableness. C D

E

52. In *Edore* v. *Secy. of State for the Home Deptt.* the appellant was a citizen of Nigeria who had entered the United Kingdom and remained back after her visa had expired. She had two children, born to a British citizen. The children were emotionally dependent on him and he was a stabling influence on their lives. If the appellant and her children were returned to Nigeria, their relationship with their father would end. The Court trying to resolve the conflict at hand opined: F

G

> Where the essential facts were not in doubt or dispute, the adjudicator's task was to determine whether the decision under appeal was properly one within the decision-maker's discretion, namely, that it was a decision which could reasonably be regarded H

A as striking a fair balance between the competing interests in play. If it were, then the adjudicator could not characterize it as a decision "not in accordance with the law" and so, even if he personally would have preferred the balance to have been struck
B differently, he could not substitute his preference for the decision in fact taken. However, there would be occasions where it could properly be said that the decision reached was outside the range of permissible responses open to him, in that the
C balance struck was simply wrong."

In ***Om Kumar*** *v.* ***Union of India*** *(supra),* this Court has held thus:

D **"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
E 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
F have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve". The legislature and the adminis-trative authority are, however, given an area of discretion or a range of choices but as to whether the choice made
G infringes the rights excessively or not is for the court. That is what is meant by proportionality.

67. But where an administrative action is challenged as "arbitrary" under Article 14 on the basis of *Royappa*
H (as in cases where punishments in disciplinary cases

are challenged), the question will be whether the administrative order is "rational" or "reasonable" and the test then is the *Wednesbury* test. The courts would then be confined only to a secondary role and will only have to see whether the administrator has done well in his primary role, whether he has acted illegally or has omitted relevant factors from consideration or has taken irrelevant factors into consideration or whether his view is one which no reasonable person could have taken. If his action does not satisfy these rules, it is to be treated as arbitrary. In *G.B. Mahajan* v. *Jalgaon Municipal Council,* Venkatachaliah, J. (as he then was) pointed out that "reasonableness" of the administrator under Article 14 in the context of administrative law has to be judged from the stand point of *Wednesbury* rules. In *Tata Cellular* v. *Union of India* (SCC at pp. 679-80), *Indian Express Newspapers Bombay (P) Ltd.* v. *Union of India* (SCC at p. 691), *Supreme Court Employees' Welfare Assn.* v. *Union of India* (SCC at p. 241) and *U.P. Financial Corpn.* v. *Gem Cap (India) (P). Ltd.* (SCC at p. 307) while judging whether the administrative action is "arbitrary" under Article 14 (i.e. otherwise then being discriminatory), this Court has confined itself to a *Wednesbury* review always.

68. Thus, when administrative action is attacked as discriminatory under Article 14, the principle of primary review is for the courts by applying proportionality. However, where administrative action is questioned as "arbitrary" under Article 14, the principle of secondary review based on *Wednesbury* principles applies.

71. Thus, from the above principles and decided cases, it must be held that where an administrative decision relating to punishment in disciplinary cases is

A questioned as "arbitrary" under Article 14, the court is confined to *Wednesbury* principles as a secondary reviewing authority. The court will not apply proportionality as a primary reviewing court because no issue of fundamental freedoms nor of discrimination
B under Article 14 applies in such a context. The court while reviewing punishment and if it is satisfied that *Wednesbury* principles are violated, it has normally to remit the matter to the administrator for a fresh decision as to the quantum of punishment. Only in rare cases
C where there has been long delay in the time taken by the disciplinary proceedings and in the time taken in the courts, and such extreme or rare cases can the court substitute its own view as to the quantum of
D punishment."

In the case of ***State of U.P. v. Sheo Shanker Lal Srivastava*** (supra), this Court has held thus:

"**23.** In *V. Ramana* v. *A.P. SRTC* this Court upon
E referring to a large number of decisions held: (SCC p. 348, para 11)

"*11.* The common thread running through in all these decisions is that the court should not interfere with the
F administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case* the court would
G not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

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24. While saying so, we are not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of proportionality. A

25. It is interesting to note that the Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf. See, for example, *Huang* v. *Secy. of State for the Home Deptt.* wherein referring to *R.* v. *Secy. of State of the Home Deptt., ex p Daly* it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than *Wednesbury*, but involves a full-blown merit judgment, which is yet more than *ex p. Daly* requires on a judicial review where the court has to decide a proportionality issue." B C D

30. The respondent-allottees have concurred with the fact that the appellant-Board has the right to re-determine the final cost price of the plots allotted on the basis of the escalation of rates with regard to both the land as well as the building materials used for the construction of the buildings of the allotted plots in favour of the respondent-allottees. However, while exercising that power their decision in determining the final price of the property must pass the test of reasonableness and fairness which are the cardinal principles of law as enunciated by this Court in the catena of cases referred to *supra* upon which the learned senior counsel for the respondents has placed strong reliance in support of his contention that the determination of the final price of the allotted plot which has been done on the basis of the Collector's guidelines, for the financial year 2011-12, was fixed at Rs.30,000/- per sq. mtr. as per the Circular No.1842, dated 30.9.2008 which is arbitrary, unreasonable and unfair. E F G H

A 31. We have in the earlier paragraphs held that the appellant-Board is entitled to fix the final cost of the land and the same is legal and valid. We however, agree with the learned senior counsel for the respondent-allottees that the same has been done arbitrarily, unreasonably, unfairly and
B without applying the principle of the doctrine of proportionality. The determination for the final price of the plots allotted to the allottees must be on the basis of the appellant-Board Rules read with the relevant aspects namely, the Collector's
C Guidelines, the Act, 1972 and the Rules, 1991, for the purpose of determination of the market value of the land. A statutory duty is cast upon the appellant-Board which is governed by the provisions of the Act and Rules and the appellant-Board being the statutory Board is amenable to
D Article 14 of the Constitution of India. The determination of the final cost of the land in dispute must be in consonance with the doctrine of proportionality but not on the basis of the market price, i.e. fixed by the Committee for the determination of guidance value of the immovable property
E in the District which would be arbitrary, unreasonable and unfair.

32. As could be seen from the letter dated 18.6.2009, by the officers of the appellant-Board addressed to Mr. B.S.S.
F Parihar and Mrs. Raina Singh that as per the advertisement published by the appellant-Board, the estimated cost of the House of HIG was Rs.40 lakhs and in view of the approved minimum bid rates, the costs of the aforesaid type of houses were likely to increase by Rs.9.53 lakhs and therefore, the
G consent or dissent of the allottees for the enhanced estimated cost for the land was sought for, as the same was necessary before the allotment of land. The said value is for the final determination of the revised estimated cost of house which is taken into consideration by applying the Collector's

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guidelines, the same will be arbitrary and unreasonable. Therefore, the doctrine of proportionality must come into play for the determination of the final price of the allotted plot, keeping in view the relevant factors namely, the escalation of the cost of the building materials and the cost of land which are re-determined as the land is acquired by the State Government in favour of the appellant-Board and the State Government will have to pay the enhanced compensation of the land to the land owners. The relevant factor to be borne in mind for the purpose of re-determination of the cost of the land is that the relevant period from the date of advertisement in the year 2007 to 2010 should be taken into consideration.

33. The demand made by the appellant-Board from the allottees after the cost of the land was determined at Rs.30,000/- per sq. mtr. is near about double the cost of the developed plots for the Duplex and Triplex houses which were earlier fixed at Rs.16,500/- as per the Rules of the Board. There is no justification on the part of the appellant-Board to fix the price of the land at Rs.30,000/- per sq. mtr. and placing the said demand on the constructed HIG houses, from the respondent-allottees would be most unreasonable and unfair. Therefore, this Court has tried to maintain the balance between the figure Rs.16,500/- per sq. mtr. fixed in relation to the cost of the developed plot by the appellant-Board, as per the Board Rules and Rs.30,000/- per sq. mtr. fixed on the basis of the Collector's guidelines for the financial year 2011-12. It would be just and proper to take into consideration the cost of the developed plots at Rs.16,500/- per sq. mtr. and take the escalation at the rate of 10% for every year from 2007 to 2011 and ask the respondent-allottees to pay simple interest on the said sum which would do complete justice to both the parties. The same would be

A in conformity with the doctrine of proportionality and it will pass the test of reasonableness and fairness.

34. For the aforesaid reasons, we partly accept the submissions made on behalf of the appellant-Board as well B as the submission made on behalf of the respondent-allottees, particularly, the submission made by Dr. Rajeev Dhawan on the principle of doctrine of proportionality, and applying the constitutional principles of reasonableness and fairness in fixing the cost of the developed plots allotted in C favour of the respondent-allottees. Therefore, to that extent his submission is well founded and the same must be accepted as it is in conformity with the law enunciated by this Court in the catena of cases upon which he has rightly placed reliance. Therefore, to that extent, we have to modify D the impugned judgment of the Division Bench of the High Court. We accordingly pass the following order :-

I. The appeals are partly allowed and the impugned judgment and order of the Division Bench of the E High Court is set aside.

II. We modify the demand notice served upon the respondent-allottees and fix the cost of the developed plots for the year 2009 at Rs.16,500/- F The same may be revised by adding 10% to the provisional cost every year upto the date of the demand made upon the said amount which is payable by the respondent-allottees. The interest at the rate of 9% per annum may be added on G such enhanced revised value amount from the date of demand till the date of payment in modification of the demands to the aforesaid extent from the respondent-allottees.

H III. The orders dated 24.11.2014 granting stay in C.A.

No. 1801 of 2015 and the order dated 16.1.2015 granting stay in C.A. Nos. 1802-1803 of 2015 shall stand vacated. The applications for direction in C.A. Nos. 1802-1803 of 2015 are disposed of. A

Kalpana K. Tripathy

Appeals partly allowed. B