SUPREME COURT OF INDIA

Ajar Enterprises Private Limited

Vs.

Satyanarayan Somani

C.A.No.10852 of 2017

(Jagdish Singh Khehar and Dr.D.Y.Chandrachud,JJ.,)

24.08.2017

JUDGMENT

Dr D.Y.Chandrachud,J.,

SLP(C)No.7116 of 2016

1. Leave granted.

2. The appellant, Ajar Enterprises Private Limited ("Ajar") has called into question a of a Division Bench of the Madhya Pradesh High Court, in its Bench at Indore, dated 8 February 2016. The High Court (i) set aside the renewal of a lease granted by Ujjain Development Authority ("UDA") to Ajar for the period from 21 December 2012 till 20 December 2042; (ii) directed that possession of the land in dispute be taken back; (iii) that in order to fetch the best price, the land be put to a public auction; and (iv) directed that the transfer fee which was charged to Ajar should be fixed on the basis of the guidelines for 2011-2012 and the differential b recovered with interest at eight percent per annum. These directions have been issued by the High Court while entertaining a petition filed in public interest by the first and second respondents.

3. UDA is a statutory body constituted under the Madhya Pradesh Town and Country Planning Act, 1973. On 16 July 1985, a deed of lease was executed by UDA of land admeasuring 43,407.00 square meters, situated at Sanwer Road and comprised in Nanakheda Scheme No. 23 at Ujjain in favour of a company by the name of IISCO Stanton Pipe & Foundry Company Ltd ("IISCO"). The term of the lease was thirty years and an amount of Rs 4,34,070 was charged as premium. The annual lease rent was fixed at Rs 8, 681 at the rate of two percent of the total premium. The salient provisions of the lease were:

> (i) The purpose of the lease was to enable IISCO to construct residential houses and develop a colony on the land;

(ii) The term of the lease was thirty years;

(iii) The lease contemplated that it could be extended, upon the expiry of the initial term for two further periods each of thirty years subject to the payment of an enhanced lease rent of fifty percent above that payable for the previous term. The clause on renewal was as follows:

"The lease period and lease rent is effective from 21.12.82. Thereafter the term of lease can be extended (renewed) for two further periods of 30-30 years. At the time of every extension the lease rent can be increased by 50%."

(iv) Since the land was granted on lease for the development of a residential colony, the lessee was ordinarily not permitted to transfer it until the construction was complete. Clause 4 of the lease provided as follows:

"The lessee has been given the land to develop the colony and construct residential houses. Therefore, until houses are constructed on this plot, this plot cannot be transferred to anyone in any manner. So long as the lessee does not construct the houses on this plot as per the sanctioned plan, he cannot mortgage, gift or in any other manner transfer this plot without the permission of the Authority. If the lessee wishes to transfer his plot to any other person due to any special circumstances then on the basis of the pros and cons of the case, on condition of payment of transfer fees to the Ujjain Development Authority of 10 % on the amount that is arrived at by adding 20 times the annual lease rent to the premium, the permission for transfer can be given. If the transfer is desired in the interests of the transferor' s natural justice then on deposit of transfer fee of Rs 100/- the plot of land can be transferred. This permission shall be given only when the lessee obtains a permission letter from the competent authority under the urban Land Ceiling Act, 1976 and submit it."

(v) The lessee had to submit building plans for approval within six months of receiving possession and to commence construction within two years. An extension of time could be granted limited to one year (Clause 5);

(vi) If construction was not commenced within the specified period, the lessor had a right of re-entry, upon which the amount paid by the lessee would be refunded with a deduction of twenty percent (Clause 6); and

(vii) The lease would be governed by other requirements of UDA, the municipal corporation and by the bye-laws of the government then prevailing or as would be made applicable from time to time (Clause 12)."

4. IISCO, which was a subsidiary of Steel Authority of India Limited (a public sector undertaking of the Union government), was ordered to be wound up by the High Court of Judicature at Calcutta in BIFR Case No. 503 of 1994 instituted under the Sick Industrial

Companies (Special Provisions) Act 1985. The Official Liquidator took over the movable and immovable assets of the company, including the leased land in dispute.

5. On 9 May 2003, the Official Liquidator invited offers for the purchase of the assets of IISCO including the leased land on an "as is where is whatever there is basis". The leasehold rights were valued at Rs 1.35 crores.

6. On 6 June 2003, UDA issued a notice to the Official Liquidator stating that it had cancelled the lease and would re-enter upon the land. The ground for cancellation was that in breach of the lease conditions, IISCO had defaulted in the payment of the lease rent for the period from June 1995 to May 2003 and had, in addition, failed to construct on a portion of land admeasuring 14,570 square metres.

7. On 29 June 1999, UDA wrote to the Official Liquidator seeking return of an area admeasuring 13,600 square metres on the ground that no construction had been carried out by IISCO, under the terms of the lease. The Official Liquidator wrote back to the Chief Executive Officer of UDA on 9 August 1999, stating that possession of the vacant land could not be handed back without an order of the High Court. UDA was advised to move the High Court for appropriate directions.

8. On 4 July 2003, a Single Judge of the Calcutta High Court while exercising company jurisdiction accepted the highest offer submitted by an individual by the name of Narendra Jain in the amount of Rs 20 crores, though it was lower than the valuation of the land. The judgment of the learned Single Judge observes that:

> "From the valuation report it appears that the valuer valued the assets of Rs. 73,68,96,313/-. The said figure includes the value of land, which has been valued at Rs 61,50,00,000/-."
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> The order of the Company Judge noted thus:
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> "I am constrained to accept the offer of Rs. 20 crores although the same is not matching the valuation report inasmuch as the Official Liquidator submits that the monthly expenses for keeping the security guards is about Rs. 1.03 lakh, and it is, further, submitted by him that already about Rs. 75 lakhs have been spent from his establishment fund as there is no secured creditor in the case. It is suggested before me that unless this offer is accepted the valuation of the Company (in liquidation) will get further diminished and there will be no future offer in the matter. I am, therefore, constrained to accept the highest offer of Rs 20 crores although it is not matching the valuation report."

The offer of Rs 20 crores, it may be noted, was for the sale of all the assets of the company liquidation including the plant, machinery and the lands held by the company, both freehold and leasehold.

9. On 22 July 2003, UDA informed the Official Liquidator that it had cancelled the lease and re-entered on the land on 7 July 2003 as a result of a breach of the conditions of lease. On 28 July 2003, UDA forwarded a cheque in the amount of Rs 2,44,052 after deducting twenty percent of the premium paid. This, it was stated was as a result of the failure of IISCO to utilise 30,506.50 square meters out of the leased land admeasuring 43,407square metres.

10. On 4 August 2003, the Official Liquidator informed UDA that the leasehold rights had already been sold, together with the other assets of the company, by an order dated 4 July 2003 of the High Court in consequence of which the cheque for refund was returned.

11. By an order dated 18 August 2003, the Company Judge rejected an application filed by a third party for setting aside the sale of the assets of the company liquidation. The sale consideration was, however, enhanced from Rs 20 crores to Rs 20.50 crores. The sale consideration is stated to have been deposited on 17 September 2003 and Ajar was nominated by the purchaser as the entity to whom the assets which were sold in the auction were to be transferred. According to Ajar, possession of the land and assets was handed over to it on 30 September 2003.

12. Ajar, by its letter dated 29 March 2004 requested UDA to mutate and transfer the land in its favour. UDA by its letter dated 18 May 2004 declined to do so on the ground that the lease stood cancelled and that it had re-entered upon the land.

13. UDA filed an application before the Calcutta High Court objecting to the transfer of the leasehold land. A learned Single Judge of the High Court, by an order dated 16 August 2004, declined to grant an interim stay and directed the Official Liquidator to conclude the sale and to execute a conveyance in favour of the purchaser. In an appeal against the order of the Company Judge, a Division Bench by an order dated 22 February 2005 directed that the status quo be maintained in regard to the leasehold land and expedited the final disposal of the application filed by UDA. Eventually, the Single Judge, by an order dated 5 August 2005, dismissed the application filed by UDA. The Single Judge held thus:

> "It appears that the learned Company Judge sold the lease-hold interest of the un-expired portion of the lease for about seven years. The deed of lease stipulated a renewal clause. For such renewal clause the parties would have to agree to the modalities. The official liquidator could not have sold any right higher than the right enjoyed by the lessee under the Deed of Lease. The official liquidator in fact sold such right which he derived from the company in liquidation. The property belonged to the applicant and it would remain with the applicant. If they do not agree to the terms and conditions after expiry of seven years the lease would not be renewed and they would automatically get possession back. Whether the company in liquidation constructed residential flats or not or whether there was any violation of clause 6 or not, was a question to be decided by a Civil Court. The applicant could not have taken up this cause upon themselves to decide that there had been in fact a violation of clause 6 and they could take possession forcibly. The official liquidator was in

possession of the land in question at material time meaning thereby this Court being the winding up court was in custody of the land in question. The applicant could not have entered into the possession without specific leave being obtained from this Court."

In consequence, it was held that the termination of the lease and re-entry were of no consequence and that UDA was not entitled to seek possession of the land from the Official Liquidator.

14. On 1 September 2005, the Official Liquidator assigned all the leasehold rights of IISCO in favour of Ajar. The deed of assignment records that out of a total sale consideration of Rs 20.50 crores, the valuation of the leased land had been apportioned at Rs 1,35,20,183. The recital in the deed of assignment reads thus:

> "(n) For the purpose of valuation the said property has been valued at Rs. 1,35,20,183/- (Rupees One Crore Thirty Five lakhs Twenty thousand One hundred Eighty Three) only being the apportioned purchase price of the said property out of the total sale consideration of Rs. 20,50,00,000/- (Rupees Twenty Crores Fifty Lacs only) as was directed to be apportioned by an order dated 6th July 2004, passed by the Hon' ble High Court at Calcutta."

The deed of assignment records that (i) the assignment of the leasehold land to Ajar was for the remainder of the lease term that is, upto 21 December 2012; (ii) the lease was being assigned subject to the rights and privileges of the original lessee under the lease agreement dated 16 July 1985. The material recitals in the deed of assignment are thus:

> "(o) In or about August, 2004 the said Ujjain Vikash Pradhikaran, the said original lessor filed an application before the Hon' ble High Court at Calcutta, inter-alia, Praying therein for cancellation of the lease of the demised lease hold property and for possession thereof intended to be assigned hereunder. By an order dated 5 August 2005 the Hon' ble High Court in dismissing the said application inter alia held that the said lease hold land was sold by the official liquidator, the assignor herein to the purchaser being the assignee herein for the residuary period of the first lease term i.e. upto 21.12.2012. By the said order, the said application of Ujjain Vikash Pradhikaran was dismissed.
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> (p) In view of the above order passed by the Honb' le High Court at Calcutta, the demised lease hold land is capable of being assigned by the assignor herein in favour of the assignee with effect from the execution of his deed upto the expiry of the residuary period of the first term of the original deed of Lease i.e., upto 21.12.2012 with the existing terms and conditions contained therein.
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> (q) In the aforesaid circumstances, the Assignor is transferring and assigning the said property to the Assignee in accordance with the existing terms and conditions

mentioned in the said Deed of Lease dated 16th July, 1985 referred to above and with the rights and privileges of the Original Lessee thereunder."

Accordingly, in consideration of an amount of Rs 1.35 crores, the appellant was assigned the leasehold rights under the deed of lease dated 16 July 1985 " with effect from the date of execution of this deed upto the residuary period of the first term of the said original deed of lease".

15. A Letters Patent Appeal filed by UDA against the order of the Single Judge was dismissed by a Division Bench of the High Court on 22 July 2009. The Division Bench held that UDA had knowledge that IISCO was in liquidation and of the notice of sale. The court held that since the properties were sold only for the residuary part of the first term of the lease, no case for interference was made out. The delay of UDA weighed in the balance. The findings of the Division Bench are extracted below:

"After considering the facts of this case and after scrutinizing the facts in this matter, it appears to us that the appellant had knowledge of the fact that the company has gone into liquidation and, further notice of sale was duly published in the newspaper which is admittedly within the knowledge of the appellant since the appellant did not take any steps in the matter for a long time. After the sale was confirmed, the properties were handed over and that too, only for the residuary part of the first terms of the lease. The appellant filed this application and there is no reasons has been (sic) shown in the petition in support of such delay caused by the appellant. In these circumstances, we have to come to the conclusion that the appellant had due notice of the facts of this case including the fact that the properties have been transferred and sold at this state. In our considered opinion, the possession of the property cannot be changed in any manner whatsoever since the order has given effect to. It is to be noted that the appellant did not taken any steps in the matter for a long period."

16. On 28 February 2011, the Governing Board of UDA resolved to file a Special Leave Petition before this Court. The Special Leave Petition was dismissed on the ground of delay on 29 April 2011.

17. In the meantime, Ajar had, by its letters dated 16 February 2006 and 8 July 2010 requested UDA to transfer the leasehold land in its name.

18. On 25 May 2011, the first respondent addressed a communication to UDA, requesting it not to effect a mutation of the property in the name of Ajar. On 1 June 2011, the Governing Board of UDA resolved to transfer and mutate the property in the name of Ajar. The transfer fee was to be determined in accordance with the guidelines prescribed by the Collector as prevalent on 22 July 2009 when the Division Bench of the Calcutta High Court dismissed UDA's appeal. On 3 June 2011, UDA called upon the appellant to pay an amount of Rs 64,20,228 towards transfer fees; Rs 1,56,258 towards arrears of lease rent and Rs 1,99,833

towards interest. On 6 June 2011, Ajar paid the dues and on 7 June 2011, an agreement was executed by which the leasehold rights were transferred in favour of Ajar in terms of the lease deed dated 16 July 1985 and subject to the applicable rules and regulations of UDA.

19. On 8 June 2011, Ajar wrote to UDA seeking a renewal of the lease for a period of thirty years on a lease rent enhanced by fifty percent over the existing lease rent. On 10 May 2012, UDA renewed the lease in favour of Ajar for a period of thirty years from 21 December 2012 to 20 December 2042. The lease rent for the renewed term was fixed at Rs 13,022 per annum, representing a fifty percent enhancement over the annual lease rent of Rs 8,681 for the original term. The lease for the renewed term was registered and Ajar paid the lease rent for the first fifteen years of the lease.

20. In pursuance of a public notice issued by UDA on 3 December 2012 inviting applications for conversion of leasehold lands into freehold, Ajar applied on 4 December 2012. On 28 May 2013, UDA called upon Ajar to pay an amount of Rs 74,57,323 towards conversion fees which Ajar deposited on 29 May 2013.

21. On 2 July 2013, the first and second respondents instituted a public interest litigation before the Indore Bench of the Madhya Pradesh High Court to challenge the deed of renewal dated 10 May 2012 and the agreement for transfer dated 7 June 2011. The petition also sought a direction to UDA to conduct a fresh allotment of the land by auction and for an enquiry into alleged acts of corruption by the officers of UDA. During the pendency of the writ proceedings, UDA executed a deed of conveyance on 12 July 2013 by which the land was converted to freehold. Leave was granted by the High Court to amend the writ petition to challenge the order of UDA dated 28 May 2013 and the deed of conveyance dated 12 July 2013. During the pendency of the writ proceedings, Ajar claims to have obtained on 19 September 2013 permissions and approvals for building upon and developing the land. Ajar claims to have entered into registered sale deeds in respect of 67 plots and to have incurred an expenditure of Rs 18.39 crores on the project. Ajar claims to have received notice of the writ petition on 15 September 2014.

22. By its judgment and order dated 8 February 2016, the High Court cancelled the deed of renewal dated 21 May 2012 executed by UDA in favour of Ajar and directed that possession of the land be taken over. The High Court also directed UDA to obtain the best price for the land by putting it to public auction. UDA was also directed to calculate the transfer fees on the basis of the guidelines prevailing in 2011-2012 and to recover the differential together with interest at eight percent per annum in regard to the transfer of the lease from IISCO to Ajar.

23. The principal findings of the High Court are summarised below:

> "(i) Though the resolution of the Board of UDA for the transfer of the land was dated 3 June 2011, inexplicably, the transfer fee was charged in accordance with the guidelines of the Collector prevailing on 22 July 2009 (the date of the decision of the

Calcutta High Court). When the transfer of the leasehold interest was effected on 3 June 2011, there was no justification to compute the transfer fee as of 2009;

(ii) The court noted the submission of the writ petitioners that in 2011-2012, UDA had realised a price of Rs 22,777 per square meter when it invited tenders for scheme No. 48 of Vasant Vihar, situated in close proximity to the land. The market value of the land in question in 2011-2012 would be Rs 65.11 crores. As a result, UDA had suffered a loss of Rs 65 crores while renewing the lease in favour of Ajar and thereafter converting it into freehold;

(iii) The well-defined principles for the disposal of public land, emerging from the decisions of this Court, lay down that the disposal of public property assumes the character of a trust. The state is duty bound to ensure that it realises the best price for the transfer of land in order to generate funds for its welfare activities. Inviting tenders with open participation or a public auction would ensure the realisation of the best price. Private negotiations should be eschewed. It is only in exceptional cases that the modalities of a tender or auction can be departed from, where the state acts in pursuance of a constitutionally recognised public purpose embodied in the Directive Principles contained in Part IV of the Constitution;

(iv) UDA had incorrectly proceeded on the basis that it had no option except to renew the lease in view of the judgment of the Calcutta High Court. The Calcutta High Court did not hold that UDA was bound to renew the lease. On the contrary, the finding was that if UDA did not agree to the terms and conditions for renewal after the expiry of the residuary term, the lease would not be renewed;

(v) The fact that UDA had cancelled the lease on the ground that IISCO had violated its covenants ought to have been taken into consideration by UDA while deciding whether to renew the lease;

(vi) Though there was a clause for renewal in the original lease deed dated 16 July 1985, UDA ought to have taken into consideration (a) the location of the land; (b) market value of adjoining land; and (c) the fact that the land had not been leased to Ajar to achieve a constitutionally sanctioned purpose under Part IV of the Constitution. UDA ought to have made efforts to obtain the best available price while renewing the lease. UDA renewed the lease on a nominal premium to confer a benefit on a private developer;

(vii) The actions of UDA were contrary to public interest and it acted in a manner in which a responsible authority would conduct its affairs."

24. The judgment and order of the High Court has been questioned in three proceedings initiated under Article 136 of the Constitution before this Court. One of them has been initiated by Ajar Enterprises Private Limited, the transferee of the leasehold interest and in

whose favour the lease was initially renewed before the land was eventually converted into freehold. The court has also been moved on behalf of third party purchasers who claim to have purchased plots from the developer. They were not parties to the proceedings before the High Court. The third set of proceedings has been initiated by UDA. In addition, I.A. 6 of 2017 has been filed by 54 applicants who claim to have entered into transactions for the sale of plots with the developer. We allow the intervention application and have heard the learned Senior Counsel in support.

25. Mr Shyam Divan learned Senior Counsel representing Ajar and Mr Chander Uday Singh learned Senior Counsel representing the interests of purchasers have broadly adopted the same line of submissions in assailing the judgment of the High Court. The submissions are thus:

> "(i) None of the purchasers of plots were impleaded, though they were necessary parties, in the proceedings before the High Court. The decision of the High Court seriously impacts upon their rights. The purchasers, it has been urged, exercised due diligence and obtained loans from public sector financial institutions. Though, the High Court was informed that eighty purchasers had paid valuable consideration for the purchase of plots, the PIL petitioners did not implead them. The purchasers, it has been submitted, are bona fide purchasers, for value without notice. At the least, if they were impleaded before the High Court, they could have urged that the relief, if any, should be suitably moulded to protect their interest;
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> (ii) Ajar perfected its title in stages. The approval by the Official Liquidator was in the nature of an assignment for the remaining term of the leasehold rights held by IISCO, and on the same terms and conditions as those contained in the original lease of 16 July 1985. Ajar could legitimately assert a right to renew the lease on the expiration of the original term;
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> (iii) All aspects of the lease including its tenure, right of renewal, rates and conversion to freehold are comprehensively regulated by statutory provisions which are devoid of any discretionary element. The lease deed dated 16 July 1985 is granted statutory sanction under Sections 181 and 182 of the Madhya Pradesh Land Revenue Code 1959. The provisions for renewal contained in the original lease deed are in accord with Rules 24 and 25 of the Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyo, Griho, Bhavano Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975 notified in 1977. Rule 25 mandates that where the period of lease is thirty years, there shall be a right of renewal for two periods of thirty years each subject to the payment of increased ground rent on each renewal, not exceeding fifty percent. The clause for renewal in the lease is enforceable both under Section 182(1) and Rule 25. Moreover Section 181-A empowers the state government to convert leases granted for residential or commercial purposes in urban areas into freehold. The state government has promulgate the Madhya Pradesh Grant of Freehold Rights in respect of Land on Lease situated in Urban Area Rules 2010. UDA had issued a public notice inviting

applications for conversion to freehold. UDA processed as many as 425 renewals in the city of Ujjain;

(iv) All transactions were in terms of statutory provisions and were effected by duly registered instruments. The provisions of Sections 181, 181-A and 182 as well as the provisions contained in the Rules of 1977 and 2010 have not been challenged by the original petitioners before the High Court. Hence, they were not entitled to question the mode of renewal or the rate at which the renewal of the lease or conversion to freehold could be affected. The High Court ignored the statutory provisions holding the field;

(v) The decision of the Constitution Bench of this Court, in re: Natural Resources Allocation indicates that a public auction is not a mandatory requirement in all circumstances. When a statute provides for any other mode, other than auction or tender, such a provision must be followed;

(vi) In any event, the option of an open auction or tender arises only where it is proposed to alienate natural resources or land belonging to or in the possession of the government or its instrumentality. There can be no recourse to an auction or tender where land is held by a lessee under a lease deed protected by Sections 181 and 182, or of land which has been converted to freehold under the 2010 Rules. In such a case, the government does not hold a right in praesenti;

(vii) The High Court erred in ignoring the statements made by UDA and by the State to the effect that full market value was charged to IISCO when the land was leased to it for building residential housing for its officers and workmen;

(viii) Ajar obtained a sanction for its residential layout from the Town and Country Planning Department on 19 August 2013. It carved out 178 plots and has sold 124 plots out of which 67 are in accordance with registered sale deeds; and

(ix) Ajar has obtained its interest in the leasehold land in pursuance of a court sanctioned sale of the assets and properties of IISCO which was in liquidation. The sanctity of contracts must be maintained. The effect of the order of the High Court would be to unfairly displace the legitimate expectations of a commercial entity which has acted in pursuance of a court sanctioned sale in its favour."

26. On behalf of UDA, it has been urged by Mr Ravindra Srivastava, learned Senior Counsel that it had taken all possible steps to cancel the lease and to take back possession of the property. Having lost before all courts including this Court in the Special Leave Petition under Article 136, UDA had no option but to transfer the lease. The lease was renewed in accordance with the terms of the deed and the statutory rules holding the field. 425 such renewals were effected by UDA and the land was converted to freehold pursuant to a policy of the state government. There has been no loss to the public exchequer. UDA acted in

pursuance of legal advice received by it. In 2005, the leasehold rights were assigned for a consideration of Rs 1.35 crores. For the purpose of computing the transfer fees, UDA adopted the date of the order of the Calcutta High Court (22 July 2009) as a result of which it obtained a further sum of Rs 64 lacs. UDA was bound by the terms of lease as well as the 1977 Rules while effecting renewal and it could not have demanded the market value of the land in 2012. The conversion to freehold is in accordance with the Rules of 2010. UDA issued advertisements for such conversion and approved as many as 152 properties for conversion to freehold.

27. On the other hand, it has been urged on behalf of first and second respondents by Ms Kamini Jaiswal learned counsel that:

> "(i)According to the Rules of 1977, land can be allotted by only four modes : (i) by direct negotiations; (ii) by auction; (iii) by tender; or (iv) under concessional terms. In the present case, the land was transferred to IISCO on concessional terms. Upon a default by IISCO of its obligations under the original lease deed, UDA cancelled its allotment and re-entered upon the land. The Official Liquidator could not have conveyed a better title than that which was held by IISCO. The fresh agreement between UDA and Ajar was for the residuary term of the original lease namely, for seven years ending on 20 December 2012. Under Rule 25, only a person holding a lease of thirty years is eligible for renewal and hence Ajar was not entitled to renewal of the lease;
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> (ii) The Calcutta High Court in its order dated 5 August 2005 noted that the leasehold interest of IISCO was being conveyed for the remaining term of seven years after which it would be at the absolute discretion of UDA to determine whether or not to renew the lease;
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> (iii) When the lease of Ajar expired in December 2012, UDA as a public authority fairly ought to have protected the public interest by bearing in mind: (a) the nature of the lease and the original purpose of the allotment of land to IISCO; (b) the default by IISCO; (c) the order of the Calcutta High Court which recognised that the lease was being assigned only for the residual term after which UDA could decide as to whether it should be renewed; (d) public interest; and (e) considerations of protecting the revenue;
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> (iv) Under the terms of the lease dated 16 July 1985, there was no automatic right of renewal. Such renewal clauses are meant for leaseholders who have constructed houses or buildings on leasehold land. When land is alienated for commercial gain, a policy which does not maximize the return for a public body would be violative of Article 14. In the present case, UDA was not acting in pursuance of a goal enshrined in Part IV of the Constitution;

(v) Ajar, acting as a builder and developer intended to develop the land in a commercial venture, contrary to the purpose for which the land was allotted to IISCO. UDA by renewing the lease and converting it to freehold land, has virtually handed over a huge tract admeasuring 43,407 square meters to a private developer for a negligible price;

(vi) UDA hurriedly effected the renewal for thirty years despite legal notices issued by the first and second respondents. The hurried conversion of the land to freehold indicates mala fides. The CEO of UDA who took these decisions has nearly twenty corruption cases pending against him;

(vii) The third party purchasers cannot obtain a better title than Ajar. As a matter of fact, Ajar ought to have informed the buyers of the pending writ proceedings. If the buyers have been informed, they have dealt with the plots at their own peril. If they have not been informed, Ajar must make good the loss by returning the entire sale consideration together with interest; and

(viii) From the documents produced before this Court by Ajar it emerges that nearly one-fourth of the sale deeds were executed post September 2015 after the hearing in the writ petition had concluded. Ajar has hence acted with a lack of bona fides only to defeat the final orders that would be passed in the public interest petition.

28. These submissions need to be considered.

29. Chapter XXIII of the Madhya Pradesh Land Revenue Code 1959 is titled "Government Lessees and Service Land". Section 181, as its marginal note indicates, deals with government lessees. Sub-section 1 of Section 181 provides as follows:

"181. Government Lessees.− (1) Every person who holds land from the State Government or to whom a right to occupy land is granted by the State Government or Collector and who is not entitled to hold land as a bhumiswami shall be called a Government lessee in respect of such land".

Section 182 provides for the rights and liabilities of government lessees

"182. Rights and liabilities of a Government lessee.−(1) A Government lessee shall, subject to any express provisions in this Code, hold his land in accordance with the terms and conditions of the grant, which shall be deemed to be a grant within the meaning of the Government Grants Act, 1895 (XV of 1895);

(2) A Government lessee may be ejected from his land by order of a Revenue Officer on one or more of the following grounds, namely : − (i) that he has failed to pay the rent for a period of three months from the date on which it became due; or (ii) that he has used such land for purposes other than for which it was granted; or (iii) that the

term of his lease has expired; or (iv) that he has contravened any of the terms and conditions of the grant provided that no order for ejectment of a Government lessee under this subsection shall be passed without giving him an opportunity of being heard in his defence".

Section 181-A provides for the conversion of leasehold rights into freehold and is in the following terms:

"Conversion of lease hold right into free hold right− Notwithstanding anything contained in Chapter VI and this Chapter of the Code, the State Government or any officer authorised by the State Government may convert various leases granted for residential and commercial purposes in urban areas into free hold in such manner as may be prescribed."

30. These provisions indicate that a government lessee is a person who holds land from the state government or to whom a right of occupation is granted by government and who is not entitled to hold land as a bhumiswami. Subject to the express provisions contained in the Code, a government lessee holds land in accordance with the terms and conditions of the grant. The grant is deemed to be a grant within the meaning of the Government Grants Act 1895. Ejectment of a government lessee can be on one or more of the grounds specified in sub-section 2 of Section 182; which are : (i) failure to pay the rent for a period of three months after it has become due; (ii) use of land for purposes other than that for which it was granted; (iii) expiry of the term of the lease; and (iv) contravention of the conditions of the grant.

31. The Rules of 1977 contain elaborate provisions for the transfer of government land vested in or maintained by the Town and Country Development Authority and in respect of other land. Rule 3 requires the general or special sanction of the state government to the transfer of government land which has been vested in or which is maintained by the Authority. Under Rule 4 all other land shall be transferred in accordance with the rules which follow. Four modes have been stipulated in Rule 5 for transfer of Authority land. These are : (i) direct negotiations; (ii) public auction; (iii) invitation of tenders; and (iv) on concessional terms. If any other mode is to be used, Rule 5(A) (inserted on 26 September 2005) stipulates that the Director Town and Country Planning Department shall forward his opinion to the state government which shall take a decision on the proposal.

32. The rules contain specific provisions in regard to the modalities to be followed for the disposal of land. Rule 6 adverts to the procedure where land is disposed of by direct negotiations. Rule 6 inter alia provides for (i) the mode of fixing the premium by the authority in accordance with a scale of premium sanctioned by the government; (ii) due publicity of the proposed negotiations in newspapers and in stipulated public offices; (iii) invitation of offers accompanied by the stipulated earnest money deposit; (iv) procedure to be followed where more than one person makes an offer to take on lease the same plot; (v) mode of deposit of the balance premium. Rule 7 provides for the fixation of premium after

the authority has auctioned a few plots of each category in the layout and the sanction of the state government has been obtained. Rule 6 indicates that even when the authority embarks upon direct negotiations for the transfer of lands vested in it, it is required to ensure adequate publicity for a proposed disposal of land. This ensures that competing offers are duly considered. Even in regard to the fixation of the premium, the authority is not left to its own discretion and the manner of fixing premium is indicated in the rules.

33. Similarly, Rules 8 to 17 embody detailed provisions in regard to the transfer of land by auction. Rule 18 provides for the modalities to be followed in disposing of lands by inviting tenders. Rule 19 allows the authority, with the previous permission of the state government, to lease out land on concessional terms to a public institution or body registered under any law for the time being in force. Rule 20 stipulates that ordinarily no lease or sale of land on concessional terms shall be allowed for purposes other than a charitable purpose such as a hospital, educational institution and orphanage. Under Rule 22, every lease of land on concessional terms is subject to the condition that if the land leased or sold is not utilized within three years for the purpose for which it was given, the authority shall have the power to cancel the lease and to resume possession. Rules 24, 25 and 26 provide as follows:

> "24. Subject to provision of these rules every transfer of land shall be made by lease and every lease in respect of any piece of Authority land shall be either for 30 years or 99 years as may be determined by the Authority with the right of renewal by the lessor.
>
> 25. Where the period of lease is fixed at 30 years there shall be right of renewal for 2 further periods of 30 years each subject to payment of increased ground rent on each renewal not exceeding 50 percent.
>
> 26. Where the purchaser by an application in writing requests the Authority to convert the period of lease from 30 years to 90 years, the Authority may do so after charging in addition 15 percent of the premium fixed for 30 years of lease with proportionate increase in annual ground rent."
>
> The Rules in Hindi are set out below:
>
> 24. इन नियमों के उपबंधों के अध्यधीन रहते हुए, भूमि का प्रत्येक अंतरण पट्टे द्वारा किया जाएगा तथा प्राधिकारी भूमि के किसी भाग के सम्बन्ध में प्रत्येक पट्टा या तो 30 वर्षों के लिए होगा जैसा के प्राधिकारी द्वारा अवधारित किया जाए साथ ही पट्टाकता को नवीनीकरण के बाबत अधिकार होगा.
>
> 25. जब पट्टे की कालावधि 30 वर्ष नियत कर दी जाए तो नवीनीकरण का अधिकार प्रत्येक नवीनीकरण पर बढ़ाये हुए भृ–भाटक के 50 प्रतिशत से अनधिक का भुगतान करने के अध्यधीन रहते हुए प्रत्येक 30 वर्षों की दो और कालावधियों के लिए होगा.

26. जब क्रेता लिखित में आवेदन द्वारा प्राधिकारी से पट्टे की कालावधि को 30 वर्ष से 99 वर्ष में संपरिवर्तित करने के लिए प्रार्थना करे तो प्राधिकारी, 30 वर्षों के पट्टे के लिए नियत किये गए प्रीमियम का 15 प्रतिशत अतिरिक्त रूप से प्रभारित करने के पश्चात वार्षिक भू–भाटक में आनुपातिक बढ़ोतरी करते हुए, ऐसा कर सकेगा.

34. Rule 24 stipulates that every transfer of land has to be (subject to the provisions contained in the rules) by lease. Every lease has to be either for thirty years or ninety nine years as determined by the authority with a right of renewal by the lessor. Rule 24 indicates that it is subject to the provisions contained in the Rules. Moreover, while Rule 24 does contemplate a provision for renewal, the expression "right of renewal by the lessor" is of significance. The provision does not embody an absolute or indefeasible right of renewal. Undoubtedly, a development authority as a public body cannot act arbitrarily or at its own whims, in deciding whether or not to renew the lease. Its decisions must be guided by public interest. Public interest postulates both protecting the interests of the authority and ensuring fairness to the leaseholder who may have constructed on the land in pursuance of the leasehold. Neither Rule 24 nor Rule 25 can be read to divest the authority of the element of discretion on whether to renew the lease. However, exercise of discretion must meet the touchstone of Article 14 of the Constitution. As a public authority, the decision must be fair, reasonable and guided by public interest. Under Rule 25, where the period of lease is thirty years, renewal is provided for two terms, each of thirty years subject to the payment of ground rent enhanced on the occasion of each renewal by an amount not exceeding fifty percent. Rules 24 and 26, read together indicate the extent of the enhancement in ground rent where the lease is renewed.

35. Now it is in this background that it would be necessary to appreciate the facts pertaining to the acquisition of the land and its allotment to IISCO under the original lease agreement dated 16 July 1985. UDA intended to prepare a town development scheme for the development of residential colonies, commercial centres, public offices and public amenities - among other things - for which an area bound by (i) Ujjain Dewas Road; (ii) Ujjain Sanwer Road; and (iii) Government Engineering College Road was proposed. A declaration was issued under Section 50(2) of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 on 18 August 1977 which was gazetted on 23 September 1977. On 20 January 1978, a notice was issued under Section 50(3) inviting objections and suggestions to the draft development scheme. On 17 June 1978, a notification was issued under Section 50(7) specifying the lands included in the scheme. The notification was published in the Gazette on 11 August 1978.

36. Subsequently, a notification under Section 4(1) of the Land Acquisition Act 1894 was issued on 20 January 1979 which was published in the Gazette on 16 February 1979. Under the notification 275 hectares of land were proposed to be acquired. A declaration under Section 6 was issued on 20 March 1979 which was gazetted on 13 April 1979. A total area admeasuring 275 hectares was acquired in four phases. In the first phase, 150.856 hectares of land were acquired against a compensation of Rs 61.35 lacs at an average rate of acquisition

of Rs 4.06 per square meter. The subject land, it has been stated, was taken possession of on 19 May 1979 and 26 May 1979. The land owners had claimed compensation of Rs 7000 per bigha (Rs 3.34 per square meter) for some part and Rs 6000 per bigha (Rs 2.87 per square meter) for the remaining land. These rates were agreed upon and compensation was paid in 1979. The premium for the grant of leasehold interests to IISCO was fixed at Rs 10 per square metre, excluding development charges. UDA claims on this basis that the premium to IISCO was charged at a market rate. What is, however of significance is that UDA has not disclosed before this Court the rate at which other adjoining lands were transferred.

37. The original lease deed dated 16 July 1985 was executed in favour of IISCO specifically for the purpose of the constructing residential houses and for the development of a colony. The total extent of the land leased was 43,407 square meters. The premium was Rs 4,34,070 with an annual lease rent of Rs 8681 computed at two percent of the premium. Under the terms of the lease, there was a prohibition on the transfer of the land unless the lessee, which had been granted the land to develop a colony and construct residential houses had done so. In the event that the lessee wished to transfer the land due to 'special circumstances', UDA could consider such a request subject to the payment of stipulated transfer fees. The original lease agreement contemplated that the term of the lease could be renewed for two further periods, each of thirty years, with an enhancement of the lease rent at the time of every renewal. We have duly considered both English translation of the clause for renewal as set out in the lease deed annexed to these proceedings as well as the original in Hindi which read as follows :

> " 1The above land is being given on lease for first 30 years for construction of residential houses on lease. The lease period is ineffective from 21.12.82. Thereafter the term of lease can be extended (renewed) for two further periods of 30-30 years. At the time of every extension the lease rent can be increased by 50 %."
>
> 1. लीज अवधि एवं लीज रेंट दिनांक 21.12.82 से प्रभावशील है. इसके बाद सदर लीज की अवधि 30–30 वर्ष के लिए दो बार बढ़ाई (नवीनीकरण) जा सकेगी. अवधि बढ़ाते समय प्रत्येक बार 50 प्रतिशत लीज रेंट बढ़ाया जा सकेगा."

38. A close reading of the clause for renewal would make it abundantly clear that there was no absolute or indefeasible right of renewal. The language contained in the clause for renewal indicates that parties contemplated that the term of the lease could on its expiry on 20 December 1982 be renewed for two further terms each of thirty years. As discussed above, Rule 24 of the 1977 Rules indicates that subject to the provisions of the Rules, every transfer would be by way of lease; the lease would be either for thirty years or ninety nine years as determined by the authority which would be renewal by the lessor. Rule 25 posited, in the case of a lease for a term of thirty years, that there would be a right of renewal for two further periods each of thirty years subject to the payment of enhanced ground rent not exceeding fifty percent. A large tract of land admeasuring 43,407 square metres was granted on lease to it with a specific purpose of constructing residential houses and for developing a colony. If land is proposed to be granted by direct negotiations [as stipulated in Rule 5(a)]

the modalities are prescribed in Rule 6 of the 1975 Rules. These modalities include (i) fixation of the premium in accordance with the general or special sanction of the state government to the scale of premium; (ii) due publicity of the proposal to dispose of land by the authority by negotiations, in at least two newspapers one of which should be a local Hindi newspaper and in another newspaper that has wide circulation in the state together with the publication of notices in prominent public offices; (iii) submission of offers together with earnest money deposit not less than one-fifth of the premium and; (iv) procedure to be followed where more than one offer is received. UDA has in its additional affidavit dated 14 August 2017 filed in these proceedings adverted to the manner in which the first phase of land admeasuring 150.856 hectares was acquired against the payment of compensation and the allotment of land on lease to IISCO. UDA has produced no material to indicate that it had followed the procedure laid down in Rule 6 of the 1975 Rules when it proceeded to make the original allotment in favour of IISCO. While UDA claims that the land was allotted to IISCO at Rs 10 per square metre excluding development charges "without any concession", it has remained silent on the rates at which other adjoining land was allotted to parties other than IISCO. There is intrinsic merit in the submission which has been urged by Ms Kamini Jaiswal, learned counsel for the first and second respondents that the allotment in the present case was not referable to Rule 5(a) which speaks of a transfer of land by direct negotiations. Since the allotment to IISCO was neither by way of public auction under Rule 5(b) nor by inviting tenders under Rule 5(c) the allotment would only be referable to Rule 5(d) which is an allotment on concessional terms. The power to grant land on concessional terms is subject to Rule 19 under which a grant is contemplated to a public institution or body registered under any law for the time being in force. Ordinarily, as Rule 20 prescribes, such a grant can be made only for charitable purposes. The expression 'ordinarily' indicates a general though not an invariable or mandatory requirement. This aspect of the matter, in our view, is of importance since the purpose for which the land which was granted to a subsidiary of a public sector undertaking was the development of a residential colony, evidently for the benefit of the employees of IISCO.

39. When IISCO went into liquidation, its assets and properties including the leasehold interest, were put up for sale under the auspices of the Official Liquidator. When the Official Liquidator issued a notice on 9 May 2003, UDA informed him on 6 June 2003 that it was cancelling the allotment of the land for violation of the terms of the lease both on account of a default in the payment of the lease rent and because of a violation of the lease condition mandating construction on the land. The Official Liquidator was informed of the re-entry by UDA. After the Calcutta High Court had accepted the highest bid for the sale of the assets of the company in liquidation, UDA raised an objection before the High Court by filing an application.

40. The learned Company Judge in his judgment dated 5 August 2005 clearly indicated that what was sold was the leasehold interest in the unexpired portion of the lease which was to still run for a period of seven years. While noting that the deed of lease contains a clause for renewal, the Calcutta High Court carefully noted that: " for such renewal clause the parties would have to agree to the modalities". The Official Liquidator was held to have assigned

the interest of the company liquidation in the leasehold land. The Calcutta High Court noted that if UDA did not agree to the terms and conditions for renewal after the expiration of seven years, the lease would not be renewed and UDA "would automatically get possession back". It was in this view of the matter that the High Court did not enquire into the question as to whether there was any breach by the company in liquidation of its obligations under the original lease deed. The judgment of the Single Judge was confirmed in appeal by the Division Bench and eventually a special leave petition was dismissed by this Court as well.

41. When UDA decided to renew the lease it proceeded on the basis that after the decision of the Calcutta High Court, it had no option but to renew the lease. Even before this Court, the submission of UDA is that once its objections were overruled by the Calcutta High Court it had no option but to renew the lease. This submission betrays a lack of understating of the judgment of the Calcutta High Court as well as of the terms of the original lease. The judgment of the Calcutta High Court made it abundantly clear both to the assignee who had successfully bid for the leasehold interest as well as to UDA that what was being transferred was the interest of the company liquidation under the lease deed dated 16 July 1985. Undoubtedly, this comprised besides the residue of the unexpired term of seven years, the benefit of the original lease agreement which contains a renewal clause. However, both on the interpretation of that clause by the Calcutta High Court as well as on the plain terms of the clause, it is evident that there was no indefeasible right of renewal. The clause for renewal provided that the lease could be renewed, not that it must or shall be renewed. Moreover, Rules 24 and 25 of the 1977 Rules cannot be read to preclude UDA, as the lessor, from having due regard to all relevant circumstances bearing upon the public interest while deciding whether to renew the lease. Several aspects bearing upon the public interest were required to be borne in mind. These included : firstly, the fact that the purpose for which the land was originally granted to IISCO namely the construction of a residential colony for the employees of IISCO could not be achieved by Ajar; secondly, whether the breach of the covenants contained in the lease agreement would disentitle the grant of renewal; thirdly, the fact that the assignment of the land was to a private developer who was evidently intending to use it not for the original purpose for which the land was allotted to IISCO but for commercial development; fourthly, the value of the land on the date when the renewal was sought; and fifthly that public interest would best be subserved by ensuring that UDA realised the best possible price for the land after following an open and transparent process.

42. We must note at this stage that the present case does not fall into the category of that class of cases where a person or entity to whom the land is allotted in the first place has fulfilled the purpose of the allotment and seeks a renewal of the grant. For instance, where a person to whom the land has been allotted for residential construction completes the construction and, upon the expiry of the term of the lease seeks a renewal of the lease, a distinct set of considerations will apply. Such an individual or a cooperative society of flat purchasers may legitimately contend that having due regard to the provisions contained in the lease document and in Rules 24 and 25, it would be manifestly unfair to re-auction the land at the time of renewal. The present case does not fall in such a category simply because the purpose for which the land was allotted to the company in liquidation was not the

purpose for which Ajar had stepped in. Ajar could not be oblivious to the observations contained in the judgment of the Calcutta High Court particularly when the clause for renewal in the original lease deed did not stipulate an absolute or indefeasible right of renewal. In taking the view that UDA had no option but to renew the lease, UDA has acted in a manner which betrays a total lack of understanding of its rights and of the trust placed in it as a custodian of public interest. UDA has acted in a manner that has ensured the conferment of a largesse upon the private developer in disregard of the public interest in ensuring the disposal of lands belonging to the authority in a transparent manner which ensures the realization of the best possible return. The renewal of the lease dated 10 May 2012 for a further term of thirty years from 20 December 2012 to 21 December 2042 was manifestly flawed.

43. The conversion of the land to freehold in favour of Ajar has evidently followed upon the renewal of the lease deed in favour of Ajar on 10 May 2012. Rule 5 of the 2010 Rules for the grant of freehold rights provides as follows:

> "5. Class of land eligible for conversion - Any land situated in an urban area and which is, -
>
> 1. Granted on leasehold basis for a period of thirty years or more by the State Government or by an Officer authorised to do so for residential or commercial purpose; or
>
> 2. given on leasehold right of thirty years or more for residential or commercial purpose, by virtue of a lease executed in favour of any person by the Madhya Pradesh Housing Board or a Development Authority or a Housing Co-operative Society on producing of a no-objection certificate from such Board or Authority or Society, as the case may be, shall be eligible for conversion :
>
> Provided that such land as has been allotted without charging full premium as prescribed under the Revenue Book Circular shall not be eligible for conversion :
> Provided further that land allotted to an urban local body shall note be eligible for conversion:
>
> Provided also that no such leasehold land shall be converted whose lease conditions specifically prohibit conversion or on which leasehold rights have accrued under the Madhya Pradesh Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhruti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 (No. 15 of 1984) or Rajiv Gandhi Patta Aashtya Yojana or Mukhyamantri Aashrya Yojana."

Both Clauses (a) and (b) of Rule 5 stipulate that, to be eligible for conversion to freehold, the land in an urban area should have been granted on a leasehold basis for a period of thirty years or more. In the present case, the conversion to freehold on 12 July 2013 has its foundation in the lease deed dated 10 May 2012 under which the

term of the lease was renewed for a period of thirty years from 21 December 2012 to 20 December 2042. But for the renewal, the term of the original lease expired on 20 December 2012. Once the renewal which was granted in favour of Ajar is seriously flawed and invalid, the conversion of the land to freehold would in consequence also be unsustainable."

44. The third party purchasers were not parties to the proceedings before the High Court. However, we have heard them in the present proceedings both on the merits of the decision of the High Court as well as on the equities which they assert in their favour. In so far as the validity of the renewal is concerned that is something which concerns Ajar, through whom the purchasers assert their claim. However, leaving aside technicalities, we have heard them on all aspects.

45. The judgment of the High Court has been assailed on the ground that the proceedings were concluded without furnishing third party purchasers an opportunity of being heard. The submission that there has been a violation of the principles of natural justice has been urged by both Ajar as well as on behalf of the purchasers. The interests of the purchasers have been pursued both in a special leave petition and in the interim application. The purchasers of plots claim their interest through the developer.

46. It is necessary to note in this context that the public interest litigation before the High Court was instituted on 2 July 2013. By that date, the developer had on 10 May 2012 obtained a renewal of the lease for a period of thirty years and had applied for conversion of the land into freehold. UDA executed a deed for the conversion of the leasehold land to freehold on 12 July 2013. It is thereafter on 19 September 2013 that Ajar claims to have obtained approvals for construction and development on the property. Even according to Ajar, the third party transactions were entered into by it during the pendency of the writ proceedings before the High Court. The developer was aware of the pendency of the proceedings before the High Court and it is in this background that the claim of his having created third party rights needs to be evaluated. Ajar tendered during the course of these proceedings, a summary containing the third party rights stated to have been created on the land in dispute. According to the statement, the total land available for sale is 24,688.06 square meters and the remaining area has to be developed for roads, open spaces, gardens and services. The saleable area has been carved up into 178 plots. The position which Ajar claims is as follows:

"(i) out of the 178 plots third party rights have been created in respect of 124 plots while 54 plots remain unsold;

(ii) sale deeds have been executed in respect of 67 plots;

(iii) agreements to sell have been executed in respect of 20 plots; and

(iv) allotments have been made in respect 37 plots."

47. The disclosures which have been made in the statement tendered on behalf of the developer indicate that the agreements to sell as well as the sale deeds were executed during the pendency of the writ proceedings before the High Court. Except for eight sale deeds, the others have been executed after Ajar was served with notice of the writ proceedings on 15 September 2014. Ms Jaiswal urged before the court that from the statement produced by the developer on the record it emerges that even after the High Court reserved judgment, the developer continued to execute agreements to sell and sale deeds before the final judgment came to be delivered. This submission is borne out from the statement which has been placed on the record by the developer. The developer executed agreements to sell in 2014, 2015 and even as late as January 2016 shortly before the High Court delivered its decision on 8 February 2016. Sixty seven sale deeds, of which details have been furnished on the record, indicate execution of the document of sale in 2014, 2015 and 2016. The summary indicates that of the sale deeds, as many as 21 were executed between November 2015 and February 2016 after judgment has been reserved and before it was delivered by the High Court. There is an evident lack of bona fides on the part of Ajar.

48. A Constitution Bench of this Court has held in its decision in re : Natural Resources (supra) that auction is not the only permissible means for the disposal of natural resources. The court noticed that legislation does permit or prescribe methods other than auction, Justice D K Jain delivering the judgment of four judges held that:

> "149...auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

Justice Jagdish Singh Khehar (as the learned Chief Justice then was) in his concurring judgment held that:

> "200. I would therefore conclude by stating that no part of the natural resource can be dissipated as a matter of largess, charity, donation or endowment, for private exploitation. Each bit of natural resource expended must bring back a reciprocal consideration. The consideration may be in the nature of earning revenue or may be to "best subserve the common good". It may well be the amalgam of the two. There cannot be a dissipation of material resources free of cost or at a consideration lower

than their actual worth. One set of citizens cannot prosper at the cost of another set of citizens, for that would not be fair or reasonable."

49. Undoubtedly, disposal of natural resources by auction is not a mandatory principle for, as the Constitution Bench held, individual statutes may provide for modalities of transfer by alternate modes which subserve public interest. In the present case, as we have noted, Rule 5 of the 1975 Rules provides four modalities: (i) direct negotiations; (ii) auction; (iii) inviting tenders; and (iv) concessional terms. Where the statute has provided for several modes of disposal, the choice among one of the available methods must facilitate the fulfilment of public interest. That inter alia requires consideration being given to all aspects of the matter including the nature and value of the land, the purpose of the allotment and the need for the authority to generate funds to facilitate the objects for which it was constituted, such as planned development. The choice of one of a range of permissible choices can never be based on the anvil of conferring an undeserved benefit on a commercial developer. The choice of methods is not left to the unbridled discretion of a public authority. Where a public authority exercises an executive prerogative, it must nonetheless act in a manner which would subserve public interest and facilitate the distribution of scarce natural resources in a manner that would achieve public good. Where a public authority implements a policy, which is backed by a constitutionally recognised social purpose intended to achieve the welfare of the community, the considerations which would govern would be different from those when it alienates natural resources for commercial exploitation. When a public body is actuated by a constitutional purpose embodied in the Directive Principles, the considerations which weigh with it in determining the mode of alienation should be such as would achieve the underlying object. In certain cases, the dominant consideration is not to maximize revenues but to achieve social good such as when the alienation is to provide affordable housing to members of the Scheduled Castes or Tribes or to implement housing schemes for Below the Poverty Line (BPL) families. In other cases where natural resources are alienated for commercial exploitation, a public authority cannot allow them to be dissipated at its unbridled discretion at the cost of public interest.

50. The present case is indeed an illustration of a situation where a public body has acted oblivious to and in disregard of public interest. The land was originally leased out to IISCO, a subsidiary of SAIL (an undertaking of the Government of India). The purpose for allotting such a large tract of land admeasuring 43,407 square meters was to enable IISCO to construct and develop a residential colony for its employees. The land was not being allotted for commercial exploitation to a developer. The terms of the lease clearly evince the manner in which the land was to be utilized and the consequences of breach. When IISCO went into liquidation, the Official Liquidator placed its assets including the leasehold land for sale. Ajar under the deed of assignment acquired the leasehold rights for the remaining term of the lease on 1 September 2005 together with the rights and benefits arising out of the original lease of 16 July 1985. The Calcutta High Court had clearly and expressly observed, while rejecting UDA's claim of forfeiture and re-entry, that the transfer was of the residual term of seven years and that if UDA did not intend to renew the lease, the land would revert to it. There was no absolute or indefeasible right to renewal either in IISCO or in Ajar, which

succeeded to the leasehold interest. As a matter of fact, when UDA decided to renew the lease, it was duty bound to evaluate all aspects bearing upon the public interest which included (i) the purpose for which the land was granted under the original lease agreement; (ii) the extent to which the purpose had been fulfilled; (iii) whether the original purpose underlying the grant of the land would be subserved by the renewal sought by a commercial developer; (iv) the market value of the land; (v) the revenue which would be generated for the activities of UDA if the land would be transferred on commercial terms that would realise the best price. UDA choose to blink at its obligations by conferring a largesse on Ajar. It did so on the hypothesis that after the Calcutta High Court had rejected its objections to the assignment of the leasehold interest, it was precluded from doing anything other than to renew the lease. Clearly this was a misreading of the judgment of the Calcutta High Court. The issue as to whether the lease should be renewed was a matter distinct from whether the original assignment of the lease in favour of IISCO to Ajar was valid. The mere acquisition by Ajar of the leasehold interest for the remainder of the term together with the benefits of the original lease covenants, did not ipso jure entitle Ajar to renewal of the lease. UDA was complicit in renewing the lease and granting an undeserved windfall on a commercial developer. Fraud, it is well-settled unravels everything. The subsequent conversion of the land to freehold in September 2013 cannot enure to the benefit of Ajar since the underlying basis of the entire transaction stands vitiated by fraud. There can be no manner of doubt about the principle which accepts the sanctity of contracts. Equally, no court can be a hapless spectator when a public authority forsakes the trust with which valuable resources such as land under its control are impressed. Land is a scarce public resource. When public bodies are vested with control over land - in this case over land which was acquired for facilitating planned development, no authority can claim an immunity from its accountability to matters of public interest.

51. We will not interfere with the direction of the High Court to the effect that the transfer charges for the deed of assignment of lease shall be determined on the basis of the guidelines prevailing in 2011-2012. The relevant date would have to be 7 June 2011 on which the deed of assignment was executed by UDA.

52. For the above reasons, we find no reason to interfere with the judgment of the High Court. However, we must, in the exercise of our jurisdiction under Article 142 of the Constitution suitably mould the relief so as to ensure the protection of persons with whom the developer has entered into registered sale deeds prior to the judgment of the High Court. We have done so after finding some weight in the equities asserted on behalf of this class of purchasers who have registered sale deeds in their favour against the payment of full consideration. We have been informed that they have taken loans from public financial institutions and have invested hard-earned earnings towards the plots which they have purchased. In the exercise of the power under Article 142 of the Constitution, the court has the duty to render complete justice.

53. In consequence we confirm all the directions issued by the High Court subject to the following :

"(i) rights which have been created in favour of third party purchasers of plots through the execution of registered sale deeds prior to the date of the judgment of the High Court shall not be disturbed;

(ii) UDA shall through its Chief Officer verify the correctness of the statement submitted by Ajar that it has executed sixty seven registered sale deeds in respect of individual plots prior to the judgment of the High Court. This shall be completed within one month with notice to the individual purchasers and Ajar. The benefit of direction (i) above shall only extend to those cases found to be genuine on verification; and

(iii)in respect of third parties (other than i above) with whom there are no registered sale deeds, Ajar shall refund the consideration paid by the respective purchasers within a period of three months together with interest at the rate of nine percent computed from the date on which payments were received."

54. The judgment of the High Court is affirmed in the above terms, and the appeals are disposed of.

ORDER

55. Hon'ble Dr. Justice D.Y. Chandrachud pronounced the Reportable judgment of the Bench, comprising Hon'ble the Chief Justice of India and His Lordship.

56. Leave granted.

57. The appeals are disposed of in terms of the signed Reportable judgment.

58. Pending application, if any, stands disposed of.