**ALLAHABAD HIGH COURT**

Purshottam Dass Tandon

Vs.

State of U.P

Civil Misc. Writ Petn. Nos. 2293 of 1969, Connected with 7326, 7226 and etc. of 1981 and 1439 and 5717 of 1982, 8213, 8212 etc. of 1981

(R.M. Sahai and A.S. Srivastava, JJ.)

25.03.1986

**JUDGMENT**

**R.M. Sahai, J.**

1. Renewal of Nazul land leases of Civil Lines, Allahabad, sprawled over an area of approximately 662 acres, one of the poshest localities of the town, renowned for its quiet serenity, famous for its, till recently, sophisticated looking marketing centre, inhabited by Judges, Lawyers, doctors, educationists, journalists, businessmen and now by a neo- rich class as well with no ostensible means but affluent and powerful, least but no less important out-house dwellers with no right or title but vote bank, has been eluding solution for more than two decades now. If the first phase beginning from March, 1959, when government issued order laying down conditions for renewal of leases, came to an end in April, 1965 when government directed the District Magistrate to renew leases of those who complied with modified conditions was marked with representations and objections by lease-holders' Association to what appeared to them to be unreasonable restrictions on right of alienation and demand of exhorbitant rate of ground rent and premium then the second and third phases namely, from 1965 to 1976 and 1976 to 1981 were marked with spurt of legislations and government orders directed towards urban socialization with its resultant effect on narrowing down of terms and conditions for renewal. With swift shift in socio and economic set up of the society, specially after 1965, the government changed its policy and the concessions granted in 1960 and 1965 were not only withdrawn by superseding those orders but fresh conditions reducing area and enhancing rent and premium, were laid down. Even in those

cases where lessees had complied with terms and conditions and order had been passed, leases were not renewed thus furnishing foundation for invoking doctrine of promissory estoppel, developed by English and American Courts as rule of equity, given new dimensions by our Supreme Court by extending it against government and Corporations not only as a weapon of defense but as cause of action as well. But the, most pungent and venomous attack was on favor showered by government on few with power sack or money bag and renewal of their leases thus denying equality guaranteed by part III of the Constitution to other similarly situated. Creation of parallel hierarchy by defining family and reducing area, acting arbitrarily in implementation of government orders were vigorously pressed. Principle of offer made by government and its acceptance by lessees by complying with terms and conditions thus resulting in binding contract was also put forward. Failure to issue notices to individual, lessees refusal of renewal of leases resulting in special injury, binding nature of executive orders, fairness in government action, reasonable behavior by public authorities who have no unfettered discretion were also advanced by various counsel who urged that government should be pinned down to its earlier promise and assurances as it was government which was guilty of unwarranted procrastination. Paradoxically what appeared to be unreasonable and exorbitant in 1959 and 1960 delayed the matters for so long is now the demand, the relief sought in these petitions. How and why the policy of government underwent change; what effect it had on right of lease-holders; can the government be held to be bound by the promise extended by it in 1959 and 1960; is the government guilty of picking and choosing lessees without there being any intelligent differentia, and, therefore, it should be directed to renew leases of others as well, are the orders issued after 1976 had being contrary to law of the land; is renewal of lease of Nazul land a concession which cannot be enforced through Court etc.; can Mandamus be issued in 1986 directing the government to do what it ought to have done in 1959 or 1960 or even in 1965, could petitioners approach this court for issue of Mandamus in 1981; are issues which emerge out of orders passed by government from time to time and the submissions advanced by learned counsel for parties.

Gist of Govt. Orders (i) 1959 to 1965 :-

2. Prior to adverting to rival submissions it is necessary to narrate, in brief, the background in which the government issued various orders declaring its policy

in this regard. In 1958 Collector, Allahabad issued notices to various lessees whose leases were expiring in that year to surrender and leave the lease land and hand over vacant possession of the same to him as representative of State Government of Uttar Pradesh who were successors to the right and interest of the Secretary of State for India in Council. This must have caused flutter and number of eminent citizens of Allahabad, which had been once the nerve centre of freedom struggle, represented the hardship which was likely to arise to them from such harsh step. According to supplementary counter-affidavit filed on behalf of State on 4th February, 1986 the Government in consequence of representation to the Chief Minister reconsidered the matter in March, 1958 and ordered that case for renewal of leases may be taken individually and possession may be taken only if lessee surrendered or the lease stood terminated in absence of any request from lessee for grant of fresh lease. Fresh representations were made resulting in what may be termed as beginning of first phase from 23rd April, 1959 when Secretary to the Government informed the District Magistrate, Allahabad that he was directed to say, 'that Government have carefully considered the question of renewal of leases of Nazul lands in Civil Lines, Allahabad which have either expired already but have not been renewed so far, or which are due to expire within the next 5 or 6 years. In consideration of the numerous representations which were made to them from time to time from the existing lease-holders, and their long association with the City, Government have decided, as a special case, to grant fresh lease to them on the terms and conditions given below, provided that they put in applications for renewal of leases at once or within a reasonable time of the expiry of the lease, to be indicated by you, but not exceeding three months from the date of this order, or the expiry of the lease, as the case may be'. It mentioned in detail the terms and conditions on which the leases were to be renewed. On receipt of it the District Magistrate issued a press note on 21st May, 1959 which led to formation of Allahabad Lease-holders Association, Allahabad which while thanking the government for its decision to renew leases voiced its feeling on exorbitant demand in view of the general economic condition of lease-holders. It was pointed out that proposed levy of premium at the slab rate system for each acre in possession of lease-holders for residential purposes was unparalleled. While conceding retention of big compound was against socialistic pattern of society it was suggested that authorities may be directed to devise practical ways and means for the same but there should be no levy at all

on the land which was necessarily appurtenant to any building. Request was made for inspection of sites by Town Planner before any area was declared as surplus. As conditions of majority of lessees was economically not better, it was claimed that rate of premium be reduced, and payment may be realized in installments. Construction of Community latrines was opposed since there was no sewer line. Ground rent was suggested to be enhanced by not more than 50 per cent. Request was made for treating Trusts, Registered Societies, Religious and Educational and other institutions differently than others. Some house-owners also met the then Prime Minister Late Pt. Jawahar Lal Nehru, who appears to have come to Allahabad in November, or December, 1959 who sent a letter on 25th December, 1959 copy of which has been filed as Annexure '17' to Supplementary Affidavit, to the then Minister in U.P. Government indicating him that although he had nothing to do with it yet the terms of renewal did appear to be severe. Needless to say that it had immediate impact and the government while retaining G.O. of 1959 issued another order on 7th July, 1960 as a special concession, by which it reduced the rate of premium on first three acres by Rs. 2,000/- in each slab. It also permitted payment in five installments. and reduced the ground rent to Rs. 100/- per acre. Insistence on construction of Community latrines was given up till sewer line was laid. Lessees were granted three months time to get leases renewed. But instead of complying with it the lease-holders Association with fond of wresting something more made another representation in August, 1960. Nothing came out of it. In 1961 the Association sent another representation to the Chief Minister-highlighting its grievances against delay and claiming renewal of leases on terms and conditions indicated therein. With every representation the lease-holders association became more exacting in its demand. On 21st March, 1963 the government issued third Order declaring the rates of premium for commercial sites. On 3rd December, 1965 the government after considering representations made to government by the association issued a fresh order indicating the terms and conditions for renewal of leases for residential and commercial purposes, to avoid hardship to the lessees. In respect of the former it was stated that rates of premium and annual rent shall be as fixed by the order dated 7th July, 1960. The payment was also to be made in five equal yearly installments but special cases could be examined by the commissioner, Allahabad Division, Allahabad for making necessary recommendation to government for enhancing the number of installments. Various clauses of its are important, which shall be referred as and when

necessary. With this ended the first phase with emphasis on renewal of leases of existing leases on payment of at least one installment, within one month of the receipt of intimation by the lessee from the Collector, or within three months of the date of the expiry of the lease whichever is earlier; And the deposit was to be deemed to be proper step on the part of the lessee to get a fresh lease executed by the lessor. The order further provided for renewal of leases of existing lessees if they deposited first installment, 'within one month of the date of receipt of intimation by him from Collector, Allahabad.' The order of 1965, therefore, made a distinction between those whose leases had expired and others by describing them as sitting and existing lessees.
Gist of Govt. Orders (ii) 1966 to 1981 :

3. On 16th February, 1966 U.P. Awas Vikas Parishad Adhiniyam was enacted for providing house sites and construction of building. On 4th November, 1968 the government order dated 3rd December, 1965 was modified and it was directed that leases of joint lessees should be renewed as far as possible for one acre only. Sub-division was permitted only where sub-divided plot was not less than 800 sq. yards. Concession in payment of lease money and ground rent was allowed on same terms and conditions as in G.O. of 1965. Time was extended for payment of first installment for those who had not received any intimation from Collector by a further period of one month from the date of intimation by the Collector. Clause (c) of the Order is very material as it was decided by government that in all those cases in which offers for grant of fresh leases were made in accordance with existing government orders on the subject and as a result of acceptance thereof by the sitting lessees contract for grant of fresh lease had been legally completed fresh leases were to be sanctioned according to term offered by Competent Authority. And then in March, 1970 an Order was issued by the Government banning grant of renewal of leases all over the State, because the State Legislature was contemplating to bring out legislation on Urban Ceiling. This ban was lifted on 12th January, 1972 but leases hence forth were to be sanctioned by the State Government only. The Commissioner and Collector could make recommendations only. Its clause (i), however, provided that in all those cases where government had sanctioned grant of leases but it could not be executed or registered because of ban imposed in 1970 steps may be taken immediately for its execution. And clause (ii) of the order provided that all those cases in which Collector or Commissioner had approved renewal

but it could not be executed because of 1970 order should be sent to government immediately for acceptance. On 9th May, 1972 Urban Building Ceiling Bill was introduced. On 11th July, 1972 Uttar Pradesh Ceiling of Property (Temporary Restriction on Transfer), Ordinance, 1972 (U.P. Ordinance No. XV of 1972) was promulgated in pursuance of Article 39-B of the Constitution of India which continued to be extended from time to time till Urban Land Ceiling Act, 1976 was enacted to prevent concentration of Urban Property and discourage construction of luxurious houses. On 19th December, 1972 the Nazul rules were amended providing for maximum area permissible for renewal of leases of 2000 sq. yards plus land on which building was constructed. Remaining area was to be surrendered to housing board and the lessees were prohibited from sub-dividing or transferring any land. On 10th December, 1976 the Government issued an order superseding all previous orders in respect of renewal of leases of Civil Lines, Allahabad in view of Urban Ceiling Act and laid down fresh terms and conditions for renewal of leases. Various restrictions were put. Lessees were required to submit proforma to Urban Ceiling Authority. Each case For renewal was to be examined by government. Collector was required to get the bungalows surveyed with help of Development Board. Leases were to be renewed for 1500 sq. metres land in view of Sections 2 and 4 and Section 4(2) of Urban Ceiling Act. And while doing so all the residents in one house were to be treated as one unit. The rate of premium was fixed at Re. 1/- per sq. feet for residential and Rs. 3/- per sq. feet for commercial purposes. Ground rent was fixed at 0.25 paisa per sq. feet. This led to representation by the lease-holders' Association to the Minister for Local Self Government requesting for reduction in rate of premium and of ground rent which led the issuance of a fresh government Order on 17th September, 1979. It superseded all previous orders and provided for submission of details about extent and type of construction, utilization of vacant land etc. Against this order representations were made on 19th November, 1979, 4th December, 1979, 11th July, 1980 and 1st October, 1980 culminating in government order dated 19th April, 1981 which superseded all previous Orders and provided for renewal of leases on fresh and new terms. It provided that leaseholders and their heirs shall be treated as one Unit. They shall file before 30th June, 1981 details about land, its constructed area, its user, time when it was taken on lease etc. List of residents including out-houses dwellers was to be prepared by District Magistrate. Heirs of deceased lease-holders were to be treated as one unit. Area

for which renewal could be made was reduced to building with 500 sq. metre of land appurtenant and 500 sq. metre open land or 1500 sq. metre whichever was more. Area of building for commercial purpose was fixed at 2000 sq. metres. Premium was fixed at 50 paisa per sq. metre.
Category of petitioners :-

4. With order dated April, 19, 1981 the third and last phase came to an end. The second phase namely, between 1966 to 1976 was marked with restrictions on renewal of leases. But from 1976 onwards the shift was different. Area of renewal was reduced from entire to square metre. Unit for premium and ground rent became square feet instead of acre. All heirs of lessees became one unit for renewal. Family was given entirely new meaning. Land covered by outhouses were to be excluded. Lessees could not even opt for it. Thus ended third phase. And lessees approached this Court. Aggrieved persons can be, conveniently, grouped in two broad categories, one to whom notices had been given by Collector and who had complied with terms and conditions as laid down in various orders issued from time to time prior to 1965 and the other to whom no notice was sent and till now have not taken any steps nor there is any order in their favor. Apart from these there are few who had purchased evacuee property from Custodian whose cases shall be dealt with separately. And then there are numerous others who have not approached this Court but may be awaiting outcome of these petitions.
Right of fresh lease :-

5. Although, as mentioned, arguments advanced by learned counsel for parties stretched over wide expanse raising issues of law and equity but it is proposed to examine them in the perspective if the lessees had any right in law to get their leases renewed, could they invoke the doctrine of promissory estoppel or claim being put at par with those whose leases had been renewed either because of Article 14 or under Administrative law. Was the order dated 19th April, 1981 invalid or its clauses were repugnant being in clash with provisions of Urban Ceiling Act enacted by Parliament; did the lessees who purchased property from evacuee become owners thereof. Taking up the issue if lessees had any right to get fresh lease executed it need not be repeated that the Collector no doubt issued notices in 1958 to the lessees to surrender and leave the land but the government, the lessor, reconsidered the matter in March, 1958 and directed

the Collector to grant fresh lease for the entire land in possession of the lessees if they desired to retain it on prevailing market rate of rent and premium. (See supplementary affidavit of State filed in Civil Misc. Writ No. 2293 of 1969 on 4th February, 1986). Whatever doubt remained was dispelled by order dated 23rd April, 1959, a government decision after careful consideration to renew lease of entire area on premium mentioned therein. And this decision never changed. Learned Additional Advocate General urged that leases granted by the Secretary of the State for India were governed by Government Grants Act, 1864. Therefore, provisions of Transfer of Property Act were inapplicable. And under Government Grants Act, its nature could be determined by its tenor only. According to him once the time for which leases were granted came to an end it stood determined by efflux of time. And the lessees had no right left in it. Reliance was placed on *State of Madras v. Osmar Haji and Company,* [1] Various terms and conditions of the lease deed filed in Civil Misc. Writ No. 2293 were also placed in support of the submission that lessees had no right left in it. The argument is devoid of any substance because the State, always was and is agreeable to execute fresh leases. Even the learned Addl. Advocate General had to accept that government never adopted shut door policy so far grant of fresh lease was concerned. Apart from it the government by its own conduct stretching over long years has given rise to right in favor of the lessees to get a fresh lease from the State. Since leases were in respect of government land, they were undoubtedly governed by Government Grants Act and their nature could be determined by their tenor. Therefore, after expiry of time for which leases were granted they came to an end. And the government could refuse to grant fresh lease or take over the same. But as seen earlier it did not. Rather it decided to execute fresh leases in favor of every lessee on terms and conditions mentioned in government order. It was said so even in paragraph 3 of the supplementary affidavit filed on 4th February, 1986. In doing so or taking this decision the government was acting in accordance with rules as paragraph 50 of the Manual itself contemplates for renewal or grant of fresh lease after expiry of the lease without any option for renewal. In law where a person, having two alternative courses of actions mutually exclusive chooses to adopt one and rejects the other expressly or impliedly then he is said to have elected to choose one. He is subsequently precluded from adopting the course which he intended to reject. It is known as doctrine of election. Like estoppel it is also child of equity. It is founded on the principle that one should not be permitted to

approbate and reprobate that is blow hot and cold in same breath. It has been extended and applied as an aspect of estoppel to prevent a person from falling a victim to what would have otherwise resulted in injustice to him and unfair advantage to other. In Chapter XIII of Estoppel by Representation by Spencer Bower and Turner III Edition page 314, the principle is explained thus :

> "Where A, dealing with B, is confronted with two alternatives and mutually exclusive courses of action in relation to such dealing, between which he may make his election, and A so conducts himself as reasonably to induce B to believe that he is intending definitely to adopt the one course, and definitely to reject or relinquish the other, and B in such belief alters his position to his detriment, A is precluded, as against B, from after wards resorting to the course which he has thus deliberately declared his intention of rejecting;"

At page 326 rule of election as applied to relationship is discussed thus,

> "The most important of these is that of landlord and tenant. In such cases, where the lease or other instrument creating the relation contains provisions for forfeiture or breach of any of the covenants, and a clause of re-entry, the lessor, on any breach by the lessee may, if he pleases, put an end to the relationship, but he need not do so, he may prefer not to exercise his right of forfeiture, whether considering it more to his own advantage to take this course or actuated by generosity or other altruistic motive. But if by acts and conduct (which is the normal type of case), or otherwise, he indicates to his tenant an intention to waive the forfeiture, and to treat the tenancy as continuing, he is estopped from subsequently setting up, as against the tenant, that has been forfeited and determined."
> The rule enunciated in this paragraph applies where the landlord waives his right of re-entry accrued to him due to breach of the covenant. On principle, however, there does not appear any difference between right of re-entry due to forfeiture or by efflux of time. A lessor may after expiry of period for which lease is granted renew the same or resume that is re-enter. But if out of the two that is re-entry or resumption the two divergent courses, he chooses to grant fresh lease or at least creates that impression by his conduct spread over long time it results in

abandonment, which according to the Supreme Court in *Sha Mulchand and Co. v. Jawahar Mills,* is an aggravated form of waiver, he cannot subsequently turn round [2] do not support the submission of learned Additional Advocate General. Apart from lease deed in Civil Misc. Writ No. 2293 of 1981 which was a lease for hotel and building the lease deed in Civil Misc. Writ No. 7226 of 1981 was produced. In material particulars there was no difference. The learned Additional Advocate General also stated that every lease deed even if it was not identical it was similar and terms and conditions of all the leases were almost the same. In these lease deeds there was no express or implied bar for execution of fresh lease. They further did not debar a lessee from applying for fresh lease. Much was attempted to be made out of the following expression,' shall and will at the end of expiration or other sooner determination of the said term peaceably and quietly leave, surrender and yield up to the said Secretary of State..... together with all such erections, buildings, and fixtures'. It was urged that this indicated that the lessees were to surrender and handover possession peaceably after expiry of the term for which the lease was granted. The expression could not be read in isolation. As is clear it was incorporated as a penal clause to apply where the lessee committed breach of conditions. It was in addition to the right of pulling down unauthorized constructions. Right of re-entry either on expiration of the term for which lease was granted or even earlier was conferred on Collector only if the lessee committed breach of any covenant. The decision in AIR 1974 SC 856 does not appear to have any relevance, since the G.O. of 1959 was not only a hope and expectation but a decision of the government to grant leases to the existing lessees and this policy of the government did not undergo any change at any point of time. The policy in fact remained the same. The government, therefore, having exercised its option and decided to renew leases it is too late in the day for learned Additional Advocate General to urge that granting of lease was only a concession which could be withdrawn by the government at any time. Nor it can be claimed that the principle of election could not apply to government in view of weighty pronouncements by the Supreme Court that government of a constitutional democracy cannot claim immunity from applicability of principles of equity and fairness. The government thus having abondoned

its right of re-entry, the learned counsel for petitioner, appears to be right in his submission that it resulted in creating a jural or legal relationship between lessor and lessee permitting them not only to continue in possession but to get a fresh lease executed in their favor. Moreover in a country wedded to ideals of democracy and welfare state it would be unthinkable to import such outdated concept. If the land is needed or building has to be demolished in public interest for general welfare probably no exception can be taken as the interest of individual has to be sacrificed for the society. But asking the lessee to vacate land or remove Malwa for no rhyme or reason. but because the State was the owner cannot be accepted to be in consonance with present day philosophy and thinking about role of State.

Renewal on what terms 1965 or 1981 (i) general :-

6. Lessees thus being entitled for renewal or grant of fresh leases the next and the most vital issue that calls for adjudication is whether on terms and conditions announced till 1965 or in 1981. Learned Additional Advocate General urged that it was unfair for lessees to claim that their leases should be renewed, for area mentioned in 1959 Order, on premium and rent of 1960 Order and within time extended by 1965 Order. According to him the State having marched ahead towards socialization it was both unjust and illegal to claim renewal of leases on terms and conditions mentioned in those orders. Talking in terms of socialism, appeared more, as a fashionable expression than with any proportion of realism. Obligation of state to remove inequalities in distribution of wealth, an inherent philosophy of a Welfare State, is not only recognised in civilised society but is an essential attribute of democracy since its concern extends for its people from "womb to tomb" Retention of big bungalows with compound of three or four acres in a country with ever growing population is a social sin. Even the Late Prime Minister Jawahar Lal Nehru in his letter dated 25th December, 1959 while writing to the then Minister in U.P. government had pointed out 'the day of large compounds is long past. It would be completely right to take away all the additional lands from them leaving just enough for the house and a little more'. When lease-holder Association represented in 1959 it itself conceded that retention of big compound was against socialistic pattern of society. But in a society committed to rule of law it had to be done within its periphery. Role of State in organizing public resources for Community

Development and prosperity of the nation cannot be doubted. Nor it can be disputed that optimum for everyone should be modern challenge. Yet it has to be done within four corners of Constitutional framework. And that probably was the reason that State government decided to grant fresh leases for the entire area. Truly speaking renewal or grant of fresh leases had nothing to do with reducing area of the big bungalows. That could be done in accordance with law. It was with this objective that various State Legislatures including our State passed a resolution under Section 252(1) of the Constitution of India which resulted in enactment of Urban Land (Ceiling and Regulations) Act, 1976 by the Parliament for 'preventing concentration of Urban Land in hands of a few persons'. Prior to this there was no law or rule in pursuance of which vacant or excess land of a person could be taken away. And no person after this Act came into force can successfully or validly claim to hold land more than the Ceiling limit. Nor that is claim of petitioners. As mentioned earlier renewal or grant of fresh lease had nothing to do with determination of ceiling limit of a person. Attempt of the learned Additional Advocate General, therefore, to suggest that renewal of entire area was destructive of social or economic balance appears to be hollow claim.

(ii) Is 1981 order invalid or repugnant to Article 252 of Constitution.

7. It may also be thrashed out at this stage if the order issued by State Government in 1981 is valid, or its various clauses are repugnant to Urban Ceiling Act of 1976. In *Union of India v. Valluri Basaviah,* [3] the effect of passing the Act was held by Hon'ble Court to be, that 'Parliament which has no power to legislate with respect to the matter which is the subject of the resolution, becomes entitled to legislation with respect to it. On the other hand the State Legislature ceases to have a power to make a law relating to that matter'. Therefore, the field of legislation in respect of 'vacant land in excess of ceiling limit to be held by a person in Urban agglomeration' became occupied. The State Legislature could not entrench upon it directly or indirectly. Even amendment to the Act could be made under Article 252(1) by Parliament only. Since the State Legislature could not legislate in respect of matters covered by the Act the State Government also could not issue any direction or Order or frame a rule which was in violation of provisions of the Act as executive power of State is co-extensive, under Article 162 of the Constitution with Legislative

power. If the power of the Legislature itself stood abrogated then the State Government was debarred from encroaching upon it. Learned Additional Advocate General urged that State of Andhra Pradesh was one of the States which had like the State of Uttar Pradesh passed a resolution under Article 252(1) of the Constitution of India. Yet it legislated and the Legislations were upheld by Full Bench of that Court in *M. Venkatarao v. State,* [4] and *T. Rangayya v. State of A.P.,* [5] and the latter decision was even affirmed by the Supreme Court. Reliance was placed on paragraphs 1 to 6, 9, 22, 24, 24 and 40 of 1978 decision and it was urged that State law would not be ultra vires but may be repugnant to the extent it clashed with Central Legislation. In Andhra Pradesh the Act was already in existence, therefore, it was held that' provisions of it which were in conflict with Central Act were repugnant. But the Government Order of 1981 was issued unlike Andhra Act after the Central Act had occupied the field. It is very difficult to agree with the learned Additional Advocate General that even after law has been enacted by Parliament the State Legislature could enact a law or government could issue an order in respect of it. Repugnancy and competency are not same. After enactment of Central Act the State Legislature lost its competency to legislate in respect of matter covered by legislation, therefore, after 1976 a government order or rule issued in respect of matters covered by Central Act would, be invalid. Futile attempt was made to suggest that entry 18 of List II was couched in wide terms therefore the jurisdiction of State Legislature was not barred in respect of topic not covered by it. It is based on certain observations in Valluri Basaviah's case (supra) forgetting that the Hon'ble Court was concerned with earlier State law, which obviously could not be held to be invalid due to subsequent resolution under Article 252(1) except that it could not operate after Central enactment to the extent the field was occupied. Nor is there any merit in the submission that Article 252 of the Constitution being in nature of exception amounting to abdication of surrender of Legislative power of the State it should be given restricted meaning. Arts. 246 to 254 carve out Legislative field of Parliament and State Legislature making them supreme in their domain. But in Emergency or where the council of State by 2/3rd Majority or one or more States considered it proper for sake of uniformity to have a Central enactment then it results in transfer of power by one Legislative body to other. Once exercised it is complete, and results in total deprivation of the State's power to legislate upon 'a law made by Parliament' pursuant to the power surrendered to it by the

legislature of two or more States holds a very special position under the Constitution and must be held to prevail over any other State law (*T. Rangayya v. State of Andhra Pradesh,* [6]
(iii) Are Clauses of 1981 order repugnant to ceiling Act.

8. Jurisdiction or power of the Legislature and the executive being barred in respect of matters covered by Act XXXIII of 1976 it may be examined if 1981 Order is invalid because it attempts to encroach upon occupied field or assuming as argued by the learned Additional Advocate General even if the order was not void its various clauses being in direct clash with provisions of the entry (entire ?) Act were repugnant. The objective of the Act is, 'preventing the concentration of Urban land in hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in Urban agglomerations to subserve the common good'. It has been attempted to be achieved by providing that no person shall be entitled to hold any vacant land in excess of the ceiling limit', in an Urban agglomeration defined in clause (n) of Sub-Section (2) of the Act. How the ceiling limit has to be determined is provided in Section 4 of the Act. Vacant Land of a person defined by sub-clause (i) of clause (a) shall vest in the government under section 10 of the Act. Family has been defined by clause (f) to mean the wife or husband and their minor children. Sub-Section (7) of Section 4 provided for special benefit in respect of a member of Joint Hindu Family. For Allahabad ceiling limit is 1500 sq. metres as it is an Urban agglomeration falling in category 'c' specified in Schedule of the Act. After this Act was passed the State Government issued first order in December, 1976 keeping in view the Urban Ceiling Act. Even 1979 Order maintained the limit in accordance with Ceiling Act. But when 1981 Order was issued it was reduced to 1500 sq. metre with constructed area. This was indirect attempt to reduce the area of Civil Lines, dwellers to even lower limit than was considered appropriate by Parliament itself to ensure fair distribution of Urban property all over the country. For instance, the constructed area according to supplementary affidavit filed in Civil Misc. Writ No. 9094 of 1981 is 3100 sq. yards or 2572 sq. metres. The entire building under Ceiling Act, being dwelling unit, with certain land appurtenant constitutes ceiling limit but under Government order dated 25th April, 1981 even a portion of building shall be required to be demolished. It is clearly an attempt to overreach the Act. It further deprives such persons from right of

appeal etc. which otherwise is available to other persons in the Act. It has already been seen that lessees acquired right to get fresh leases executed in their favor in respect of entire land. This could be effected or altered only in accordance with law. Since the government attempted to do indirectly what it could not do directly the clause appears to be bad. Similarly the restriction that all heirs of lessees shall be deemed to be one unit is contrary to the definition in the Ceiling Act which confines it to the person, his wife and minor sons. Clause which prohibits exercising of option in respect of out-house dwellers irrespective of Ceiling limit etc. is another attempt which is violative of Ceiling Act of 1976. Only other clause in 1981 G.O. is in respect of rate of premium. Charging more money is neither socialistic nor just and fair. Of course, it may adversely affect the economically weak. It was argued by the learned Additional Advocate General that renewal of lease could not be covered in entry 18 of List II. He urged that field occupied by Parliament is in respect of ceiling on vacant land and not renewal of leases of Nazul land. Learned counsel further urged that Explanation to Sub-Section (11) of Section 4 of the Act left no room for doubt that provisions of the Act were not applicable to persons holding lease, 'the unexpired period of which was less than ten years at the commencement of the Act'. And as term of leases had expired or even where it had not expired its unexpired period was not less than ten years in 1976 the provisions of the Act were inapplicable. The arguments do not appear to have any substance. Sub-Section (11) of Section 4 is in nature of exception to the clauses mentioned therein. The Explanation to it even if taken as independent Section or Sub-Section is in nature of enabling provision empowering Competent authority to proceed and determine ceiling area if the building was in occupation of tenant treating him as a person 'holding any land'. To suggest that provision of the Act did not apply to lessees would be arguing against legislative policy. Various clauses of the order were thus an indirect attempt to trample on legislating field rendering the entire order bad. In any case, they being repugnant to Act XXXIII of 1976 could not be given effect to. It was over enthusiasm or zeal of those on whose initiative and sincere implementation the successful implementation of Welfare policy rests which resulted in this unfortunate impasse.

iv) Rights under nazul Manual and Govt. order.

9. Even if the order is not bad or its clauses not repugnant to Ceiling Act it hardly makes any difference in law since the claim of petitioners even otherwise

appears to be well founded. Although right of parties have to be decided basically on orders referred to earlier but since arguments had been advanced on Nazul Manual it may be pointed out that none of these orders, in any manner, clash with any paragraph of the Manual. Nazul as described in rule means any land or building which being property of government is not administered as State property; It normally refers to such property which is managed by local authorities that is, Municipal Board or Town Areas etc. Chapter II of the Manual provides in detail how the Nazul property in charge of Municipal Board is to be managed by whom and in what manner. These rules are set of administrative Orders or collections of guidelines issued by government for the authorities to deal with government property. Since no right is claimed by petitioners which does not stem out of it or runs counter to any of the paragraphs it is unnecessary to examine if they have statutory force or are referable to Article 296 of Constitution of India as argued by the learned Additional Advocate General. Rule 56 of the Manual relating to building leases provides for a minimum period of 90 years. No rule prohibits granting of fresh leases after expiry of this period. Rule 50 of the Manual itself visualizes grant of fresh lease or renewal of existing lease which expired without option of renewal as was the case of leases of Civil Lines, Allahabad. Even terms and conditions of lease-deeds did not contain any such restriction. It was vehemently argued by the learned Additional Advocate General that in view of rule 50 no fresh lease could be granted except with approval of State Government. That probably was the reason for arguing that provisions in the Manual had the force of law. But the argument appears to be based on misapprehension as the rule applies in those limited cases where grant of lease involves concession in favor of lessees. What is meant by concession has been explained by providing that it should be by fixing the rent at a lower rate than the prevailing market rate. No such material has been brought on record. Even the counter and supplementary affidavits are silent. If it would have been so then government would not have issued G.O. dated 12th January, 1972 directing that all renewal or grant of fresh lease of Nazul land shall be done by State Government only. Therefore, provisions of various government orders being in conformity with the Nazul Manual have to be looked into to decide the right of parties as it now stands firmly established that in absence of any Statute or rule to the contrary executive or administrative instructions have the same force as a rule framed by government and are capable of creating rights and obligations

*Amarjeet v. State of Punjab,* [7] While narrating facts it has been seen that 1959 Order was a government decision to renew the teases. And leases of some persons were renewed as well. In fact the learned counsel for State furnished details of persons who applied for renewal of leases, the date of its expiry, date of notice for renewal, authority by whom renewal was ordered and date of its renewal. From the chart relating to those persons whose lease was renewed, it stands admitted that leases of sixteen persons had been renewed between 1962 to 1967 for the entire area on premium and rent mentioned in 1959 and 1960. Orders either by the Collector or Commissioner. And one lease was renewed by the State Government in November, 1972 of 2 acres 4752 sq. yards. Basis of renewal or the reason for renewal of leases other than the one renewed in 1972 was disclosed in supplementary counter affidavit filed by the Nagar Mahapalika in Civil Misc. Writ No. 2293 of 1969. It was stated that lease of Dr. K.N. Katju was renewed on 8th January, 1968 as the first installment of premium for renewal of lease was paid by him on 7th December, 1964. It was further averred in paragraph 4 'as far as other persons entioned in Annexure (P) of the writ petition are concerned, they all have (except Brij Lal Gupta) made payment of at least one installment of the premium before 3rd December, 1965 the day on which the aforesaid was issued and accordingly they were all entitled to renewal of the lease in respect of the land even if it exceeded one acre'. The basis adopted by the government for renewal was payment of at least one installment of the premium determined by the government by its G.O. dated 23rd April, 1959 amended on 7th July, 1960. But when Civil Misc. Writ No. 7326 was filed in 1981 and the averment in supplementary counter-affidavit filed in Civil Misc. Writ No. 2293 was extracted as admission of government it was resiled and claimed that it was beyond the scope of authority and in any case it being on behalf of Mahapalika it did not bind the government. It is difficult to appreciate this. Nazul land of Civil Lines, Allahabad was and is managed by Nagar Mahapalika, Allahabad. Renewal of leases under management of Local Bodies is no doubt contemplated by Collector, Commissioner of State Government but that surely cannot be reason to disown what was stated on behalf of Mahapalika. Various departments of government and semi government institution are expected to work in unison. Denial or going back on what has been said by one is destructive of harmony and cohesiveness which should be hallmark of working in public departments. The Nagar Mahapalika and State Government in case of Nazul land cannot be treated as different from

one another. Statement in the counter-affidavit, therefore, that it did not amount to admission by State Government has to be ignored. Even if the counter-affidavit filed in Civil Misc. Writ No. 2293 is not taken into account on this aspect the government itself admitted in paragraph 51 of the counter-affidavit filed in Civil Misc. Writ No. 7326 of 1981. 'The persons in whose favor the lease-deed had been executed had completed all the formalities for grant of fresh lease and that too before the embargo of 1970 came into force. 'It amounts to saying something as was said in counter- affidavit filed in Civil Misc. Writ No. 2293. In paragraph 16 of supplementary affidavit filed on 4th February, 1986 it is admitted that out of 126 persons to whom notices had been issued 116 had paid the premium But why leases of few only were renewed is not explained. Reason for not renewing leases of few is mentioned which shall be adverted to later. In paragraph 57 of Civil Misc. Writ No. 7236 it is averred that large number of lessees had deposited the requisite premium prior to 1965 and orders for renewal of leases had also been passed but the leases had not been executed. It is not denied in paragraph 52 of the counter affidavit. No reasons have been disclosed as to what prevented the government from renewing leases of such persons. From the chart supplied by State counsel it is clear that at least forty nine persons to whom notices had been issued by the Collector had applied for renewal and deposited the installments as well. Barring few cases where notice itself was given after 1965 it stands admitted that deposit of first installment was made before 1965. In some of the cases Commissioner had even passed the Order. Yet the leases were not renewed.

10. Avowed government policy, therefore, was to renew leases of all 'existing' and 'sitting' lessees if they had deposited at least one installment after receipt of intimation by Collector. At least that was, to use the language of 1965 Order, to be 'deemed to be proper step on the part of the lessee to get a fresh lease executed by the lessor'. Then there should have been some reason for not adopting same policy for others. Procrastination or delay on part of those who under rules were obliged to pass orders could not recoil on lessees. If something was to be done but it was not done, then in law it shall be assumed to have been done. It was vehemently argued by the learned Additional Advocate General that since renewal could be done by State Government only mere deposit of any installment by lessees did not create any right in their favor either in law or in equity. In counter-affidavit also reference has been made to paragraph 50 of the

Manual. But the claim is not only devoid of any merit but it is opposed to facts. Undisputedly leases of various persons were renewed by Commissioner and Collector, rather every lease was renewed by these authorities except the one in 1972. How can in teeth of such facts the opposite parties claim that renewal could have been done only by State Government. Even assuming it to be so the renewal could be refused in exercise of discretion on reasonable and just ground. It could not be withheld. Delay in exercise of discretion with passage of time stands converted into duty the nonperformance of which becomes enforceable in court of law. Power to do a thing or not to do it is conferred upon public authorities as it was on trust to be exercised validly and properly. It has to be in confine of reasonableness. The inaction of the authorities and delay for long years resulting in injury and causing prejudice to lessee went beyond the ambit of reasonableness. Powers of public authority in democracy governed by rule of law are different than those of private persons. A private person is capable of disposing his property as he likes. The powers are unlimited. But a public authority or a government of Welfare State is committed to act for general welfare and public good. Its ownership is not absolute as that of private person. It holds the property in trust for Welfare of the people who in a democracy are, ultimate sovereign. By nature of ownership, therefore, it has no unfettered or absolute power or discretion. Its actions are to be tested on anvil of public good. And to find out if the action of public authority is for public good it has first to be reasonable and fair. That which is unreasonable or unjust cannot be upheld.

11. Not only this even in 1965 the government's intentions not to cause any 'hardship' to the lessee is unequivocally expressed in the Order dated 3rd December, 1965 when some further relaxation in terms of renewal was provided. But the most significant is the last sentence of paragraph VIII(b) of the Order extracted below :

> "It has been also decided that the above principle should be applied in all the cases of existing leases which have expired absolutely and in which the sitting lessees had not deposited, prior to the issue of these orders, one or more installments of premium and the contract has not become complete between them and the lessor."

If the Order is read in reverse or affirmatively it hardly leaves any room for doubt that the government intended rather it treated the deposit of at least one installment before the issue of the Order as creating complete contract between government, and lessee. Since a binding contract came into force by deposit of at least one installment it could not be eroded unilaterally by change in policy, nor the government could go back on it. It was much after this that renewal of leases was prohibited in March, 1970. But that was also operative only for two years. In January, 1972 when the ban was lifted the government was too keen to renew leases as is clear from the order itself, which directed the authorities to do registration in accordance with law. In all those cases in which government had already approved sanction of leases but the same could not be done because of ban imposed in March, 1970. It further directed that, in those cases in which Collector or Commissioner had approved renewal but it could not be done due to the ban imposed in March, 1970 papers may be immediately forwarded to obtain orders of the government. It is indeed surprising that despite these directions the authorities remained inactive. Even the lease of Sri D.D. Banerji in whose favor government had passed the order in April, 1966 (paragraph 50 of Civil Misc. Writ Petition No. 7326 of 1981 which is admitted in paragraph 45 of counter-affidavit), the lease was not registered. After all government orders are passed to be followed by those who are meant to implement it. But it remained in cold storage. If specific government order was not sufficient to move the authorities then it was too much to expect that they would have acted promptly or even belatedly in pursuance of government order of March, 1972 resulting in grave injustice. Fairness in public dealings is core of our jurisprudence. It is a substantive principle the breach or violation of which furnishes cause of action to the aggrieved.
Promissory Estoppel.

12. To relieve victim of arbitrary abuse of discretion and pin down public authorities to act with honesty and good faith the Courts have evolved doctrine of Promissory Estoppel In M.P. Sugar Mills v. State of U.P. AIR 1979 SC 621. Its horizon was broadened not only as a weapon of defense but as a cause of action enforceable in a Court of law. It was observed that it was an equitable principle evolved by the Courts for doing justice and there is no reason why it should be given only a limited application by way of defense'. The argument of learned Additional Advocate General that the High Trees case (London

Property Trust Ltd. v. High Trees House Ltd. (1956) 1 All ER 256 or Hughes v. Metropolitan Railway Company (1877) 2 AC 439, which have been source of inspiration far this doctrine by Court in our country confined it to private agreements or contracts and not to government is no more res integra as the doctrine has been applied and extended by our Supreme Court to bind not only Municipal or Local authorities but government as well. The Hon'ble Court in M.P. Sugar Mills case (AIR 1979 SC 621) (supra) after reviewing English and American authorities on this aspect held :

> "It is indeed the pride of Constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned; the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel ?".

Doubt was expressed on this aspect in Jit Ram v. State of Haryana AIR 1980 SC 1285 : (1981) 1 SCC 11. The principle, however, has been re-affirmed in Union of India v. Godfray Philips (1985) 4 SCC 369 : (AIR 1986 SC 806).

In M.P. Sugar Mills case (supra), it was laid down :

> "The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not".

Every ingredient of promissory estoppel as explained by Hon'ble Court was undoubtedly present in all those cases in which petitioners had deposited at

least one installment in pursuance of notice or correspondence with Collector. To argue, therefore, that the deposit of installment by lessees did not create any right in their favor is a cry in vacuum. The learned Additional Advocate General vehemently argued that the claim of petitioners on prevailing practice, sending of draft lease by local authority, demand for premium, sending of plans or deposit of installments were not sufficient for invoking Promissory Estoppel. He urged that the primary requirement of representation was missing. According to him circumstances which have been mentioned in various petitions could utmost be construed as intention or belief or understanding and not representation by the government so as to create a right in their favor. Reliance was placed on Halsbury Law of England Vol. XVI (Edition IV, 1069 and 1593). Reliance was also placed on Boddeley v. Inland Revenue Commissioner (1953) 2 All ER 233 and National West Minster Bank Ltd. v. Barclays Bank International Ltd. (1974) 3 All ER 834. He urged that English decisions which furnished foundation for doctrine of Promissory Estoppel have laid down that there should be fusion of equity with law. In other words, equity must not override law. And the Court should give effect to equity in such a manner that it did not run counter to law and if this principle was applied then it was obvious that while enforcing the rule of equity the Courts could not bye-pass the Nazul manual or government orders issued from time to time in this regard. Learned counsel urged that Moti Lal Padampat case (AIR 1979 SC 621), or Jit Ram case (AIR 1980 SC 1285) or Godfray Phillips, case (AIR 1986 SC 806) (supra) did not create any conflict so far petitioners were concerned. According to him since the law had undergone tremendous change after 1965, it was not possible to enforce something which was contrary to law in 1985 or principle of Promissory Estoppel. Reliance was placed on paragraph 13 of the Godfray Phillips' case. It was also urged that apart from this the petitioners failed to make out any claim of Promissory Estoppel as the basic ingredient of detriment was not established. In alternative learned counsel urged that even if on the principle of Moti Lal Padampat Sugar Mills case (supra) it was held that "principle of Promissory Estoppel applied then the assurance extended was to renew the leases it could not be held as assurance in respect of area and premium as well. Reliance was placed on paragraphs 5, 26, 39, 40, 41 and 50 in Jit Ram's case (supra) and it was urged that because of delay the petitioners had lost their rights in 1965 but in 1985 it was impossible to ask the Court to issue a writ to enforce such a right.

13. None of the English cases appear to be relevant. In Barclays' (1974-3 All ER 834) theory of implied representation was rejected because it was founded on a forged cheque. According to Webster Third New International Dictionary, 'representation means' statement made to convey a particular view or impression of something with the intention of influencing opinion or action; In Black's Legal dictionary, it is defined as 'Any conduct capable of being turned into a statement of fact'. That the government orders issued from time to time, were statements made to convey that fresh lease shall be granted and therefore it constituted representation to lessees that if they complied with terms and conditions mentioned therein their leases shall be renewed cannot be doubted. Nor it can be disputed that the decision was followed by notices from. Collector informing the lessees that the term of lease had expired and the government was willing to renew the lease if the amount of lease money, site plan etc. was submitted. Even if these notices would not have been there it would not have made any difference as it is admitted that these orders issued by government to Collector were later on made subject of press statement by the Collector. Action in pursuance of these orders followed by deposit of installment, sanction of plan. sending of draft lease or order by Commissioner could not be construed as belief or faith. To argue that the order of 1959 did not amount to assurance or it could utmost bind the government for renewal but not entire area or an terms mentioned in the Order is ignoring facts. Even the argument of detriment was advanced on misapprehension. In M.P. Sugar Mills case (AIR 1979 SC 621) it was observed, 'that if no detriment was suffered but prejudice would be caused if promisor was permitted to back out then it was sufficient for invoking the equitable principle'. Could there be a better illustration of altering position to prejudice than cases like Misc. Writ Petition No. 6237 of 1982, where the lessees constructed house after depositing the lease money and getting the plans sanctioned. The opposite parties cannot be heard either in law or in equity asserting that the order of Commissioner was without jurisdiction or the term of leases having expired the lessee did not have any right to construct. Such inequitable assertion or claim is prevented from being put forward when right of parties are determined on fairness. Even those cases where the lessees had only deposited the installment would be squarely covered as they would suffer if the government, the promisor, was permitted to act differently as it is abundantly clear that terms and conditions for renewal in 1981 are not only widely different from what they were in 1959 and 1960 but they seriously prejudice the lessees.

Nor is there any merit in submission that representation or assurance was not made by proper authority. The assurance having been extended by State Government through its orders after careful consideration it was by competent authority. Nor did the Commissioner or Collector in acting on it went beyond scope of their authority. In fact all leases which were renewed prior to 1972 were by Commissioner and Collector. Even the Nazul Manual empowered the Commissioner to do so. And above all renewals done by Commissioner and Collector have been accepted in counter- affidavit to be valid and proper renewals. Then in renewing on terms and conditions mentioned in Government Order the Commissioner or Collector did not act contrary to law.

14. Subsequent change of policy could stand in way of petitioners only if no right was created in their favor. But as observed earlier the petitioners having deposited installments as announced or envisaged in government orders right stood created in their favor. If the wheel of law had already completed its course then it could not be turned round because there was a shift in policy. Such claim was rejected in M.P. Sugar Mills' case (AIR 1979 SC 621) (supra). It was observed :

> "Mere claim of change of policy would not be sufficient to exonerate the government from the liability, the government would have to show what precisely is the changed policy its reason and justification so the Court can judge for itself which way the public interest lies".

Change in policy by government was attempted to be defended due to enactment of Ceiling Act, of 1976. How could this result in nullifying the implied contract which had come into force by deposit of first installment or alter the right created in favor of lessees on assurance extended by government is not easy to comprehend. No one can deny that after enactment of Ceiling law a lessee cannot hold land more than the limit provided therein. But what it had to do with renewal or grant of fresh lease. Why was it necessary to supersede the government order. Grant of fresh lease could be subject to law. No one can claim nor it has been claimed that by renewal of leases the lessees shall not be subject to ceiling law. The government itself treated renewal or grant of fresh lease differently from alienation. It issued a government order in 1970 prohibiting any transfer and banning all renewal of leases. By order issued in

1973 alienation was permitted subject to permission by Collector. And as mentioned earlier renewals of Nazul leases were permitted from 1972 without any restriction on area. Therefore, despite Ceiling Act being in offing and draft model bill pending before Parliament having been circulated on 22nd March, 1972 to renew leases, it directed the District Magistrate and Commissioner to take immediate steps for renewal. That there was no intention or policy to curtail the area is further clear from the renewal of one lease in December, 1972, for more than one acre. The argument, therefore, that there was a change in policy has no legs to stand. As observed by Hon'ble Court in M.P. Sugar Mills case (AIR 1979 SC 621) (supra) the change in policy could not be a pretext. It had to be justified. It had to be co-related with public interest or compelling necessity. Nothing has been mentioned in the government Order of 1981 or any order issued prior to it nor any consideration by government resulting in change of policy has been averred in the counter- affidavit which could establish that government was compelled to depart from its declaration to renew leases on terms and conditions mentioned in 1959 and 1960 Orders which was reiterated in every subsequent Order till 1976. If till 1976 the government policy was to renew on terms of 1959 and 1960 then it was for government to show that there were circumstance which justified its reversal. Over enthusiasm or misplaced zeal of administration in absence of public interest frustrates State activity. Reliance on paragraph 13 of Godfray Philips' case (AIR 1986 SC 806) (supra), wherein the Hon'ble Court pointed out the circumstances in which, 'the doctrine of Promissory estoppel would be displaced', also does not appear to be appropriate. No estoppel is being pleaded against Legislative function nor the government is being asked to enforce what is statutorily prohibited. Nor was the assurance or promise to renew the lease for entire area on terms and conditions mentioned in 1959 and 1960 Order was contrary to any law. Even now there is no law which shall be violated. As observed earlier the renewal is bound to be subject to Ceiling law, therefore, it could not be contrary to law. In Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd. AIR 1983 SC 848, the Hon'ble Court extended the principle of Promissory estoppel to compel performance of duty which was causing harm and injury due to unreasonable conduct of the corporation. In Suraya Narain v. Bihar State Electricity Board AIR 1985 SC 941 the government was held bound by its declaration to absorb the Engineers recruited by it earlier. Basis for all these decisions is fairness and bona fide. As regards R.K. Deka v. Union of

India AIR 1984 Delhi 413, it does not help opposite parties as deposit in that case was made in pursuance of voluntary scheme announced by government and not under any Government Order as in this case, Executive necessity may inhere power of variation but in cases of petitioner it was just the otherwise. The petitioner had right to get the leases executed on terms and conditions mentioned in 1959 and 1960 Order. This was not rendered. impossible or against public policy.
Article 14 of Constitution of India.

15. Thus petitioners who had deposited at least one installment prior to 1965 or in intimation by Collector had right to get fresh lease not only under government order and Nazul Manual but also because the government could not back out from the assurance extended by it. Apart from the equitable principle of estoppel the thrust of submissions have been that all those lessees who had complied with terms of government Order and even those to wham no notice was given by Collector were entitled to be put at par with those whose leases had been renewed because, 'equals are entitled to equal things'. To appreciate this it is necessary to mention that those persons whose leases had been renewed were eminent and had acquired social status or political stature. For instance, late Dr. K.N. Katju, ex-Central Law Minister, Chief Minister and Governor, Sri S.K. Verma, ex-Chief Justice and Governor, late Sri B.L. Gupta, ex-Judge of this Court, Sri J.D. Shukla, I. C. S. renowned civil servant, Sri O.N. Misra, I. A. S. well known bureaucrat, late Sri Bal Mukand Bagga, wealthy businessman. But out of those who were left out of the galaxy is no less distinguished. To name few, Sri S.N. Kacker, ex-Central Law Minister, Solicitor General of India and Advocate General of the State, late Sri S.S. Dhavan, ex-Judge of this court, Governor, and High Commissioner, late M.L. Chaturvedi, ex-Judge of this Court and member of Union Public Service Commission, Sri W. Broome, I. C. S. and Sri R.L. Gulati, Sri Hamid Hussain, late Sri Bhagwan Das Gupta, all ex-Judges of this Court, Sri Lal Ratnakar Singh I. A. S. Ex-Member of Board of Revenue and member of the Committee constituted in Clause (2) of 1959 Order along with Sri O.N. Misra whose lease had been renewed. Lessees in Civil Lines Allahabad constituted one class. Some might have succeeded in their life but that surely could not take them out of the Class and entitle the government to treat them differently. Political strength or executive height, economic affluence or social stature could not justify

favorable treatment. It cannot be accepted as reasonable basis for picking and choosing out persons similarly situated far different treatment. Even where no uniformity is discernible. For instance, lease of portion of plot No. EE/B was renewed to enable Sri P.D. Tandon (an eminent journalist and ex-Minister) to purchase it. Other portion in occupation of Sri S.N. Kacker remained where it was even though all formalities had been completed. Both Sri S.N. Kackar, and Sri P.D. Tandon came of rich and influential background. Both succeeded in their life and attained social and political stature. And yet they were not treated similarly what impelled the authorities to renew leases of some and refuse others cannot be easily made out. Various counter and supplementary affidavits filed on behalf of opposite parties are silent and have left it for speculation and guessing. In respect of renewal or grant of fresh leases every lessee stood in the same class or group as those whose leases had been renewed, because a class is known or described by its characteristics, quality or trait or relation or combination of these. In supplementary affidavit filed in November, 1985 on behalf of State in Writ Petition No. 2269 of 1959 it was stated that fresh lease was granted in favor of Sri S.K. Verma, in 1972 because 'he had applied for the grant of fresh lease or renewal of the lease on 10th May, 1958 before the issue of G.O. dated 23rd March, 1959. Action had been started in his case before the issue of G.O. although the premium was ultimately paid on 27th May, 1972, whereafter fresh tease was granted. His case was thus distinguishable with other cases'. It was further pointed out that 'negotiations were going on between State government and Sri S.K. Verma, about the purchase of his property at Ghazipur and for the adjustment of the premium from the sale proceeds of the said house. However, the deal could not be materialised. It was due to negotiations that the payment of lease money continued to be deferred'. To say the least there could have been no better lame excuse than what has been offered in this affidavit. Applying for grant of fresh lease before issue of G.O. dated 23-3-1959 could not create a different class for Sri Verma from others who had made similar applications either before 1959 or after 1959. 'Mini classifications based on micro-distinctions are false to our equalitarian faith and only substantial and straightforward classification plainly promoting relevant goals can have constitutional validity. To over do classification is to undo equality, State of J. and K. v. T.N. Khosla AIR 1974 SC 1. Equal protection of laws or equal treatment under government orders or executive instructions to persons similarly situated cannot be denied on assumed difference or artificial

groupings. The government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licence only in favor of those having grey hairs or belonging to a particular political party or professing a particular religion or faith', Ramanna v. I.A. Authority of India AIR 1979 SC 1625. To secure the ideal of equality, render it workable and effective the law may classify and may determine range of persons who may be treated similarly or differently, but the classification, (i) must be founded on intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group (ii) that differentia must have a rational relation to the objective sought to be achieved by the Statute in question. The classification may be founded on different basis namely, geographical or according to the object or occupation or the like. What is necessary is there must be a nexus between the basis of classification or the object of the Act under consideration : Budhan Choudhry v. State of Bihar AIR 1955 SC 191. As seen earlier, the opposite parties have failed to disclose any reason for differentiating or picking up some for grant of fresh lease and denying it to others. The action of the authorities, therefore, was violative of the basic requirement of classification being based on intelligible differentia distinguishing one person from the other. Constitutional pledge of equality is founded on ethical principle of equal opportunity and similar treatment to persons similarly situated. It ensures fairness, instills discipline and promotes rule of law the very basis and foundation of Welfare State which ensures protection of individual against arbitrary exercise of power by the public authority. 'Do not discriminate without reason', should not only be the endeavour but definite and positive approach.

16. In E.P. Royappa v. State of Tamil Nadu AIR 1974 SC 555, the Supreme Court laid bare new dimensions of Article 14 by expanding its scope and extending its guarantee against arbitrariness. Equality was described as a 'dynamic concept which could not be 'cribbed, cabined, and confined", within the traditional and doctrinaire limits. The Hon'ble Court observed that' from a positivistic point of view equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies. One belonged to the rule of law in a republic, while the other to the whim and caprice of an absolute Monarch'. It was further widened in Ramanna's case (AIR 1979 SC 1628) (supra), when the Hon'ble Court held,' that Article 14 strikes at arbitrariness because an action that is arbitrary must necessarily involve negation of equality'. Even the learned

Additional Advocate General could not defend, what could not be defended. He, however, emphasized the word 'deny' in Article 14 which means refuse, reject, repudiate or decline and urged that to establish discrimination under Article 14 of the Constitution it was necessary for the petitioners to establish continuous denial According to him although petitioners might have been equally placed with those whose leases had been renewed hut they were distanced in time. Learned counsel submitted that by passage of time it became impossible for government to renew the leases and the petitioners cannot seek protection of Article 14. Learned counsel urged that being treated less favorably than others which is the source of petitioners claim could not be covered in ambit of Article 14. Learned counsel submitted even if there was any discrimination it could not benefit petitioners and if the government for some reasons committed any error in picking out some persons and confer benefit on them then others who were left out cannot derive any advantage as action of the government qua those persons may be bad but this cannot be a ground for granting fresh lease to petitioners. The submission proceeds on complete misapprehension of Article 14. The content and reach of which cannot be put in strait-jacket. It is an expanding and developing philosophy. It is not an abstract formula but a concept to bring equality in a society based on unequals. It protects undue favor to one and (illegible) to others. It cuts at arbitrariness. Various government orders issued from time to time were declarations of public policy which could not be bargained. Omission on part of government or its functionaries not to pass an order resulting in hardship and injustice is as bad as an order passed arbitrarily without application of mind. The latter results in removal of the order from record whereas former attracts direction to act in accordance with law. The State Government by delaying matters for no reason created a situation where its actions became discriminatory and volatile of Article 14. In Sri Chand v. Government of U.P., AIR 1986 SC 242, discrimination was held to have arisen between operators who were plying because of orders of High Court and others due to unreasonable delay on part of government in approving the Scheme. The explanation given by learned Additional Advocate General during arguments that as leases of nearly 200 persons were involved which required examination of various documents and circumstances without there being any such averments in any counter or supplementary affidavits was a futile attempt to cover up which was incapable of being protected. It was handsome apology for atrocious inaction. By these petitions relief sought is not for striking down the

renewal of leases in favor of certain persons but for a direction to government to treat them in similar manner as they had treated others. The entire code of our jurisprudence is founded on honesty in approach and fairness in behavior. A government of a Welfare State cannot and should not try to wriggle out of what has been done by it by adopting subterfuges. If the government was persuaded for some reasons extraneous or otherwise to enforce its orders in favor of some of them it cannot deny similar treatment to others similarly situated only because they did not have necessary resourcefulness to approach the government. In a case where discrimination had arisen due to governmental action it shall be deemed that those who have been denied the benefit were also entitled to same relief on assumption that they had approached the government and the government should have granted the same benefit as it granted to others. Decision in Chief Commr. v. Kitty Puri AIR 1973 Delhi 148, that favor shown by government to some similarly situated cannot furnish cause of action to others to approach the Court for similar treatment became doubtful in view of Sangara Singh v. State of Punjab AIR 1984 SC 1499, where the Hon'ble Court directed the petitioner to be put in same bracket' by reinstating him as others who had been favored by government were similarly situated. It was held by the Hon'ble Court, 'logically the appellants must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their case'. Ratio an Narain Das v. Improvement Trust AIR 1972 SC 865, also is not helpful to opposite parties as the Hon'ble Court refused to grant any relief to petitioner not because he was not entitled to be treated similarly with others who had 'erroneously succeeded in getting his land exempted', but because petitioners failed, to bring their case 'within Section 56 of the Act'. In Randhir Singh v. State of Punjab AIR 1977 SC 2209, it was held that one should not be subjected to unjustified treatment. And 'to remedy the unjust,' the Hon'ble Court directed that the petitioner should be placed on par with others. In Vishnu Das Hindu Mill v. State of M.P. AIR 1981 SC 1636, the claim that accidental or unconscious discrimination cannot furnish ground for any action in Court of law was rejected.

Effect of failure of Collector to give Notice to the lessees.

17. It may now be seen if those lessees to whom no notice had been given by Collector can claim violation of any right and if they also are justified in asserting that they should be put at par with those to wham notices were issued.

It may not be out of place to mention that in the very first order issued an 23rd April, 1959 it was mentioned that the leases should be renewed if applications far renewal were put in within a reasonable time'. Clauses 2 and 3 of the G.O. provided for assessment of actual rent and premium which was to be 'intimated to the lessee' obviously to enable him to know the amount which he was required to deposit. Issuing of notice was reiterated even in 1965 G.O. Clause 6 made it necessary for the lessee to pay at least one installment of premium 'at the rates now decided' within one month of the receipt of intimation by him from the Collector. It is thus obvious that it was not only the intention but clear and declared policy of the government that premium etc. should be deposited on receipt of notice by Collector, and that was proper and reasonable as well as it required determination in each case about the area for which the lease was to be renewed, the premium which was required to be paid. By issuing notice to some and denying to others the Collector created two class of persons without any basis. Since the performance of the order was dependent on notice to be issued by Collector, the action of the Collector in omitting to issue notice to some was obviously discriminatory. As entire movement of grant of fresh lease was dependent on notice which cannot be construed in any other manner except that it was mandatory then non- issuance of it resulted in breach and no shelter could be sought by the opposite parties that petitioner should have approached by themselves. It was for this reason that Supreme Court in Hindu Mall's case (AIR 1981 SC 1636) (supra) held that discrimination perpetuated even by oversight was vicious. From government orders issued from 1959 to 1965 it is clear that the decision of the government to renew grant of fresh leases for entire area was clear and unequivocal. Negotiations between the government and the lease holders association was only in respect of premium and rent. Even various clauses of 1965 order do not show that negotiations were at an end. In Hughes v. Metropolitan Railway Company (1877) 2 AC 439 (1874-80), All ER (Rep), 187 it was held that if time was spent in negotiations then it should be deemed on principle of equity that time granted by the notice for doing an act stood waived. At page 197 Lord Black Burn quoted judgement of Mellish LL.J' notwithstanding the fact that although he himself intended to abandon his six months notice yet in my judgement if his conduct was such as to put the defendant on their guard and to leave them reasonably to believe that strict legal right of the six months notice should not be insisted upon that is individual to entitle to relief upon equitable ground'. In Birmingham and District Land Co. v.

London and North Western Railway Co. (1888) 40 Ch D 268); (1886 to 1890), All ER (Rep) 620, the principle was reiterated that if the course of negotiation had the effect of leading one of the parties to suppose that the strict right arising under the contract will not be enforced and be kept in abeyance, then it should not be permitted to be enforced so as to work inequitably. In Randhir Singhs' case (AIR 1977 SC 2209) (supra) the petitioner was put at par by directing the authorities to grant him similar treatment as to others even though he approached after expiry of date. The Hon'ble Court repelled claim of Medical authorities, that the letter sent to petitioner on corresponding address having returned he could not base his claim on late delivery of telegram on village address, on principle of fairplay and anxiety to prevent injustice to the candidate who was not to blame :

On same principle the lessors who were prevented from depositing first installment because no notice was sent by Collector cannot be subjected to unjustified treatment which results in disadvantage to them and advantage to others of the same class. In fact discrimination arose because of action of Collector in not issuing notices to all lessees.

Individual and Illustrative cases :

18. Even though principle of law discussed earlier applies to all petitions yet some of the petitions have peculiar features and also because in respect of some State has disclosed reasons for not renewing the leases in supplementary affidavits filed on 4th February, 1986 it is appropriate to examine them separately. Civil Misc. Writ No. 7226 of 1981 :

Evacuee Property

19. House No. 11, Edmonston Road, Allahabad belonged to Sir Shah Mohd. Sulaiman, an ex-Chief Justice of this Court. Some of his heirs, on partition of the country migrated to Pakistan. Consequently they became evacuee under clause (d) of Section 1 of Administration of Evacuee Property Act and their right and interest become 'evacuee property within meaning of Clause (f) read with clause (j) of Section 1. And the property vested in the Custodian In 1954 Lady Fatima, wife of the Chief Justice claiming to be co-sharer but not being an evacuee appears to have filed a 'claim' within meaning of clause (b) of Evacuee Interest Separation Act, 1951 which was decided by competent Officer in Cases Nos. 397 and 411 of 1954 and share of the lady was separated from 'composite

property' defined in clause (d) of Section 2 of Separation Act. On separation the evacuee interest vested in the Custodian. On 17th September, 1956, entire property was sold by competent officer under power conferred upon him upon section 10 of Evacuee Interest (Separation) Act, 1951 in favor of late Tika Ram Gulati, father of petitioner, who had migrated from Pakistan to Allahabad in 1947 after partition. Sale certificate under rule 11E was issued in his favor on 2nd April, 1957. Payment was made by adjusting the amount of compensation which late Gulati was to get under Payment of Claims Act for the immoveable property left by him in Pakistan. According to averments in paragraph 11 of the petition when property was sold it was announced by the competent Officer that the term of the lease which was to expire in 1964 was to be automatically renewed for a period of 25 years from the date of expiry of the lease without any further change except the ground rent which was to be Rs. 60/- per year. On September 2, 1967 the petitioner wrote a letter to the Administrator, Nagar Mahapalika, Allahabad informing him that he had come to know that the lease of the site had expired but it has not been automatically extended as was announced at the time of auction nor any notice had been received by him. Since the petitioner was anxious to get the lease renewed the letter may be treated as a request for the renewal of the lease. In pursuance of this letter he was required to furnish some information which was done by him. But he was informed that the leases were not being renewed for more than one acre. In July, 1973 the petitioner sent representation to the local Self Government for renewal of the lease of the entire land separately to every co-owner. It was stated that since sale consideration was Rs. 73,000/- late Sri Gulati with permission of the authorities associated one M.L. Suri, who also was an evacuee as co-purchaser. Later on petitioner purchased share of Suri, and became co-owner with his father. And after his father's death he in his own right and his other brother by devolution became co-owners. The letter was forwarded to the Commissioner, Allahabad who in turn forwarded it to Nagar Mahapalika which agreed with petitioner that his case was different from others and he and his co-owners were entitled for renewal of the entire area by splitting the land. The respondent the Mahapalika was endorsed by Collector and, Commissioner as well. Since despite these orders the lease was not renewed, the petitioner addressed a letter to the Chief Minister on 10th July, 1975 which was sent to the Minister, Local Self Government who acknowledged the letter and asked the petitioner to meet him at Lucknow. In paragraph 22 of the writ petition it is stated that petitioner

met the Minister concerned, who assured him that necessary action would be taken soon. In counter-affidavit these factual averments are not disputed. It is stated that after expiry of the lease on 28th Sept. 1964 notice was issued to the ex-lessee on 3rd February, 1965 to surrender the land or to apply for fresh lease.

20. Issue of notice in 1964 to ex-lessees because their name was recorded in records when property had been sold by competent officer in 1956 and permission had been granted by opposite parties for transfer of share of M.L. Suri, co-purchaser with late Tika Ram Gulati, to petitioner do not reflect well on working in the office of opposite parties. It was as bad as giving no notice. And then what about petitioners letter sent in 1965 and then recommendation of Nagar Mahapalika, etc., in his favor. No attempt was made to rectify the error. The petitioner, therefore, is entitled to be treated similarly as other. Since petitioner was prevented from complying with orders because of failure of opposite parties to give him notice, therefore, it could not result in forfeiture of his lease rights nor could the opposite parties exercise option of re-entry.

21. Necessity of examining this petition, separately, arose not because no notice was served but because it was urged that as a result of sale of evacuee property after bringing it in compensation pool under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 the petitioner became owner of it. It was argued that all property vested in her or his Majesty before the independence. But it was managed by Secretary of State for India. According to learned counsel this right comprised in itself the right of ownership and the subordinate right, that is, the lessee's right. He urged that ownership continued with her Majesty but lessees rights were transferred. According to him the ownership and the lessees rights were two different rights and they vested in two different persons. And when country became independent and the property became evacuee by virtue of Administration of Evacuee Property Act and it vested in the custodian then it was vesting of lessees rights in a person who till then was the owner. Learned counsel submitted that it was the obligation of the British government which devolved on India and it became recognized as persons who came from Pakistan became Indian Nationals and vice versa. He urged that by operation of Evacuee Property Act there was a surrender of lessee's right resulting in merger. Reliance was placed on Section 111(d) of the Transfer of Property Act. According to him lesser right of the lessee stood

annihilated and nothing was left in evacuee property as the bigger State namely, the lessor's interest or the ownership interest annihilated or devoured the lesser interest, that is, lessee's interest. In other words it became the property of government. It was such property which was brought into compensation pool under the Displaced. Persons Act and was converted into cash for compensating the persons who had been displaced. To do this or to convert the property into money, the government sold the property. Therefore, the effect of it was that what was transferred in favor of purchaser was not right, interest or title but property itself He urged that it was erroneous to argue that it was interest of evacuee which was transferred. According to him what was transferred was the property as was clear from Annexure II to the rejoinder Affidavit. Learned counsel urged that by operation of law the lease in favor of the evacuee stood determined. Learned counsel urged that under the Settlement of Evacuee Property Act, 1951 read with the Displaced Persons (Compensation and Rehabilitation) Act, 1954 three interests were created, one of the evacuee, the other of the government and the third of those who had gone to Pakistan. These three interests could be adjusted by separating interest of evacuee with those who had stayed in the country. Learned counsel submitted that if this be correct then in the house in dispute there was the interest of heirs of Sir Suleiman, who had gone to Pakistan his widow who had stayed in this country and the government. Learned counsel urged that it was a composite property within the meaning of Section 2(c) and (d) of the Act and The Displaced Persons (Compensation and Rehabilitation) Act, 1954 and since Section 3 had overriding effect on all inconsistent law including law relating to Evacuee Property it was the provision of Displaced Persons Act which was to prevail. Learned counsel urged that it was not disputed nor it could be disputed that custodian must have informed the competent Officer and he must have proceeded to sell the property in accordance with law. According to him factually the competent Officer did proceed in accordance with law as was clear from the averments made in paragraph 4 of the writ petition which were not denied. Learned counsel urged that from Annexure (2) to the Rejoinder Affidavit namely, Sale certificate, it was clear that the interest was separated and the effect of separation on the right of government was that the whole property or the entire property vested in the government without encumbrance. Therefore, theoretically the government under section 12 of 1954 Act acquired its own property and then when it transferred the property in favor of petitioner

it was transfer of not only the right and interest but the property itself. Reliance was placed on Mohd. Fasiuddin Khan v. Government of India AIR 1976 SC 361 and Haji Siddik and Haji Umar v. Union of India AIR 1983 SC 259.

22. Effect of acquiring property under section 12 of Displaced Persons Act of 1954 by publishing a notifications, as was done in Fassiuddin's case (supra), and bring it in compensation pool may result in vesting of the property in Central Government free from all encumbrance and its transfer in lieu of compensation may result in creating absolute interest to that extent in transferee. Even it may be assumed that transfer of property under 1954 Act is by converting it into cash, therefore, if any part of it is taken away it may amount to deprivation or reduction of the compensation which may be contrary to law. But all this appears to be academic as no foundation has been laid in the petition nor any material has been brought on record to establish that property was acquired under section 12 and it formed part of compensation pool. It was only after acquisition under section 12 of Displaced Persons Act that custodian could cease to have jurisdiction and the property could be dealt under 1954 Act. But since there was no acquisition consequences of 1954 Act could not follow (See Basant Ram v. Union of India AIR 1962 SC 994 and Gopal Singh v. Custodian AIR 1961 SC 1320). Even in the amendment application filed on behalf of petitioner no such averment had been made. No inference can be drawn about these only because sale certificate was issued in favor of petitioners father. Then it was a sale by competent Officer under Evacuee Separation Act, 1951 and not under Section 14 of Displaced Persons Act, 1954. Evacuee interest could be sold by Custodian or it could be acquired by Central Government under section 12 of Displaced Persons Act, 1954. It is in a latter class, that is acquisition only that provisions of 1954 Act apply. Suggestion that since sale certificate was granted by competent Officer who is referable to Section 16(2)(b) of D.P. and C.R. Act, 1954, therefore, it should be assumed that property formed part of compensation pool cannot be accepted. Nor any assistance can be derived only because sale certificate was not issued in Form No. XXIII meant for lease hold rights.

23. Nor there appears any merit in the submission that there was a merger of lessor's and lessee's interest. either because of Administration Evacuee Property Act or under Section 111(d) of Transfer of Property Act. Even assuming that

Transfer of Property Act applied Section 111(d) could operate only if lessor and lessee's interest vested in the same person. But the property admittedly belong to State Government whereas the evacuee interest which included lessee's interest vested in the Central Government. Division of property into property of Dominion and State is recognised by Article 294 of the Constitution of India. Under Government of India Act, 1858 the entire property of company vested in Her Majesty under section 39. It continued under Section 28 of Government of India Act, 1915 but under Section 72 of Government of India Act, 1935 the property vested in Her Majesty for Government of India or province. The same scheme continued under' the Indian Independence (Rights) Property and Liability Order, 1947 except that property vested now in Governor General. Therefore, Central and State governments were two different person in whom different interest vested. As regards Central Government what vested in Custodian its representative was 'property' of an evacuee. That is whatever interest the evacuee had and since the evacuee had lessee's interest only this was capable of vesting in Custodian. Further by vesting of property in custodian, who as the word itself indicates had only the custody of property nature of property could not change and it continued to be property of evacuee, therefore when sale was made it could be of evacuee interest only (See Mohd. Ali v. Bhagirath, 1964 Andh Pra 126, and Mohd. Ebrohim v. Essak Haji Ali Mohammad, AIR 1962 Bom 169). Apart from it, it cannot be disputed that whole property did not become evacuee property as interest of widow of Sri Sulaiman was separated. Therefore, what vested in the custodian was the interest in the house of heirs of late Sri Sulaiman, who had migrated to Pakistan, minus the interest of his widow as is clear from Pirdhandas Parsumal v. Hajrabai Mohd. (1968) 9 Guj LR 24 But what was sold to petitioner was the entire bungalow that is the interest of evacuee and non evacuee. Thus the claim of petitioner that his father became absolute owner stands negatived. But the petitioner had automatic right of renewal of lease for 25 years. Allegation in paragraph 11 of the Writ Petition remains uncontroverted. And that probably was responsible for such a fabulous price for a building the lease of which was going to expire just in seven years. Since lessee's interest vested in custodian who transferred it to petitioner's father on explicit condition of automatic renewal for 25 years it shall be deemed as one of the conditions stood added to lease. The opposite parties, therefore, were bound to renew lease of petitioner for 25 years automatically without charging any premium from them. Since in

other respects petitioner's case is similar to others fresh lease shall be executed in his favor but no premium shall be charged for first 25 years.
Civil Misc. Writ No. 9573 of 1981 :
Unfair Stand of Opposite Parties.

24. Evacuee interests in Site No. 30, Civil Lines, Allahabad were sold to Lala Karoli Mal on 6th July, 1959 who sold it to petitioners on 6th March, 1962 after obtaining permission from Collector, Allahabad on 13th February, 1962. Although all this was admitted in counter-affidavit but in supplementary affidavit filed on 4th February, 1986 a legal issue has been raised that since purchase was made after expiry of lease it could not create any interest in favor of petitioner. Needless to emphasis that such unfair stand does not behave the government. Granting of permission by Collector was not only giving up right of re-entry but recognition of subsisting interest of lessee.
Civil Misc. Writ No. 11349 of 1981 :

25. It is claimed that since Mrs. J.D. Patel and Mrs. F. Chinnimi became Pakistani nationals no subsisting right was left in petitioner. Premises No. 24 Canninghton Road, belonged to one Sri C.D. Mostishan. He died leaving a Will dated 11th March, 1922 in favor of Mrs. B.B. Mistry, his adopted mother and her heirs. Suit No. 24 of 1940 was filed by step brother of Sri Mohisan challenging the will. It was held invalid by Supreme Court on 9th May, 1956 qua Mrs. Mistry but valid qua her presumptive heirs namely, Mrs. Patel and F. Chinnimi. To describe them as ex-lessees in the circumstances is not correct. They did not go to Pakistan as a result of partition. Further Collector having given notice for grant of fresh lease in 1963 all this appears to have been raised mere for arguments' sake. Civil Misc. Writ Nos. 2293/69, 7001/81, 7133/81, 11349/81, 7228/81 and 12596/84 : Joint Residential and Commercial
26. Premises are used both for residential and commercial purposes. How such leases are to be renewed in mentioned in detail in clause III of 1965 Order. In view of these guidelines where commercial purpose is nominal or in corner or in a small portion such as Civil Misc. Writ No. 7001/81 or 7133/81, then the authorities may determine premium at an early date treating it as residential.
Civil Misc. Writ No. 7326 of 1981 :
Illustration of Promissory Estoppel

27. Site No. EE, Civil Station was purchased by petitioner on 24th May, 1954. Fresh lease deed was executed on 22nd May, 1956. Term of the lease expired on 5th January, 1959. On 25th August, 1959 Executive Officer, Municipal Board sent notice informing that since no application for renewal had been (made) in pursuance of press note it may be presumed that lessee was not interested in fresh lease. Notice was replied on 29th August, 1959 expressing interest in renewal. Request was made for treating letter as formal application for renewal. Printed notice was given on 14th December, 1959. Notice dated 2nd November, 1960 giving premium and rent. On 13th January, 1961, facility of payment by installments granted. First installment paid on 30th October, 1959. Collector forwarded the cheque on 15th November, 1962 for action for execution of lease. On 4th January, 1963 Municipal Board sent three copies of site plan for new lease. Plan was returned duly signed on 10th January, 1963. Demand of original lease by Municipal authorities could not be complied. Last installment deposited an 22nd January, 1967. In 1965 Municipal authorities sanctioned demolition of existing bungalow and fresh construction. New bungalow constructed on huge cost. It is a classic instance of Promissory Estoppel.

Civil Misc. Writ No. 8171 of 1981 :

Illustration of Article 14 :

28. Lease of site C of 30, Elgin Road, expired on 13th March, 1961. Notice dated 26th December, 1961 by Collector to petitioner either to surrender or apply for fresh lease. Co-lessees applied on 29th January, 1962. On 19th June, 1962 Collector sent pro forma to deposit a sum of Rs. 23,325-63 p. and Rs. 294.88 p ground rent and on 19th October, 1962 permitted petitioner to deposit in five installments. First installment deposited on 17th November, 1963 and last on 8th February, 1966. Copies of site plan duly signed by co-lessee returned on 10th March, 1966 and D.D. letter by Superintendent, Nazul properties intimating that Commissioner had sanctioned fresh lease. On 26th January, Nagar Mahapalika took possession of 77 sq. yards for widening road. Consequently refunded Rs. 190/-. Despite letter in 1973 and notice in 1977 to State Government no lease granted when fresh lease was executed in favor of Sri S.K. Verma, while he was acting Governor, in respect of site situated within ten yards distance of site 'C'. Both petitioner and Sri Verma have been judges of this Court. Houses of both are adjacent No distinguishing feature. Apart from promissory estoppel glaring case of discrimination.

Civil Misc. Writ No. 9094 of 1981 :

29. Although petitioner deposited the amount demanded by opposite parties, but he had applied for renewal of entire. In any case no estoppel against legal rights.

Civil Misc. Writ No. 8941/81, 8949/81, 9178/81, 9569/81 and 11932/81 :
30. These referred in supplementary affidavit do not call for any separate discussion.

31. That takes us to the last submission advanced by the learned Additional Advocate General, namely if this Court had jurisdiction and power to issue Mandamus after such long delay. According to him even if the petitioner had some right under various Orders issued till 1965 they lost it due to passage of time and change of policy on rational ground. He urged that between 1959 and 1976 there was sea change resulting in supersession of earlier government Orders, therefore, it was not possible for petitioner to invoke superseded policy nor this Court can direct its enforcement. He urged that one of the basic principles for issuing Mandamus was that the aggrieved person should approach the Court with utmost haste but in this case the petitioners themselves delayed the matter and approached this Court for enforcing orders issued in 1959 and 1960 in 1982. Learned counsel urged that for issuing a Mandamus the Courts have held three dates to be material. The date on which the cause of action accrues or the date on which the petition is filed or the date of hearing of writ petition. He urged that although there was no authority from which it could be gathered which was legally enforceable date yet from the decision in A.K. Gopalan v. Government of India, AIR 1966 SC 816. It could be inferred that, in absence of any other guidelines the test should be the date of hearing, or the date of filing of counter-affidavit as held in Talib Hussain v. State of J. and K., (1971) 3 SCC 118 : (AIR 1971 SC 62). And as on none of these dates the government order of 1959 was surviving no direction can be issued by this Court to revive what was already dead. Reliance was placed on Kalyan Singh v. State of U.P., AIR 1962 SC 1183 and The Queen v. The Church Wardens (1876) 1 AC 611 and it was urged that no mandamus can be issued for renewal of lease. According to learned counsel this court could utmost provide guidelines as was done in State of U.P. v. Raja Ram Jaiswal, AIR 1985 SC

1108.

32. Relief of Mandamus is granted where no other remedy is available, 'the order of Mandamus is an order of a most extensive nature'. It was introduced, 'to prevent disorder from a failure of justice'. Abuse of discretion is abominable to our system of law. One of the primary purposes of Courts entrusted with responsibility of enforcing Constitution is to control and remedy the injustice arising out of intentional act or accidental omission resulting at times in depressing deficiency and frustrating government policy the success or failure of which largely depends on honesty and sincerity of its officials. The Courts by controlling or remedying abuse of discretion do not assume power for themselves but effect salutary restraint to promote cause of justice and maintain rule of law. Even in England theory of prerogative power has been exploded and laws arms to reach into its sphere has been accepted. Lord Dublin in Chandler v. D.P.P. (1964) AC 763, Lord Denning in Laker Airways Ltd. v. Department of Trade (1977) QB 643. To argue therefore, that this Court even if it finds injustice arising due to illegal exercise of power 0 omission to act in accordance with law should refrain from granting relief because of time asking this Court to convert itself into lamentable spectator and not to discharge its role and adjust the law by striking balance between efficient government and protection of citizen against mis-management by its officials. Expense of jurisdiction and depth of power exercised by this Court under Article 226 can be measured by yardstick of justice and equity only. Mere delay should not be stumbling block in exercise of writ jurisdiction. Inaction must be associated with carelessness, something like negligence or remissness, to convert slackness into laches and disentitle a person from approaching this Court in its extraordinary jurisdiction. But where distance in time is linked with negotiation, representation and its consideration the argument of passage of time stands diluted. Further even though reduction of area, grant of fresh lease as far as possible to one acre, was in contemplation in 1965 but no clear cut policy was spelt out and when subsequent Orders were issued no such restriction was placed. Till 1976 renewal of or grant of fresh lease was reiterated an terms and condition mentioned in 1959-60. In Yogeshwar Jaiswal v. State Transport Appellate Tribunal. AIR 1985 SC 516 it was held, 'delay in performance of statutory duty amounts to continuation of process of law and has to be remedied by the Court particularly when the public interest suffers thereby'. In Sri Chandra v. State of

U.P., AIR 1986, SC 242, a direction was issued after 26 years since there was inordinate delay in passing orders by State government under Section 68D of Motor Vehicles Act'. Even under law of limitation the right is not lost. It is the remedy which becomes barred. Therefore, unless something becomes impossible of performance it cannot be refused because of passage of time specially when opposite parties were themselves instrumental to it either because of inaction of passing orders or omission to issue notice. As seen earlier Renewal of leases even today either for the entire area or on terms and conditions mentioned in 1959 and 1960 does not present any difficulty. Moreover, the delay was because of negotiations. Renewal or granting fresh leases having been decided by the government in 1959 and reiterated even in 1976 the terms and conditions for the grant of fresh lease could justifiably be a matter of deliberation. Time taken in negotiations or deliberation cannot be considered as delay resulting in laches so as to disentitle the petitioners from seeking the relief of mandamus. Lessees cannot be put to disadvantage when the government kept the doors open for negotiation.

33. Legal issues having been resolved, role of Courts defined how should the conflicting interest be reconciled due to confusing dichotomy between State endeavour to protect livelihood, a right recognised in Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180 of numerous out-houses dwellers some coming down from the days of 'gora sahib' and exploited for generations and lessees for whom even late Prime Minister Jawahar Lal Nehru wrote a letter to local Self-Government Minister. Although paragraph 12 of 1981 Order prohibiting lessees from exercising option in respect of such tenements has been held to be invalid. Yet the effect this clause must have had on such dwellers cannot be undermined or ignored. A Welfare State is not only an ideal or a vision but a conviction and necessity. It is the rational basis of a modern State. Its policy implications flow from broad idealogy of economic and social uplift. Whether it was political expediency or necessity which persuaded State Government to assure settlement of such tenements with those residing in it need not be commented upon or gone into but it cannot be disputed that removal of poverty by providing houses to weaker section of the society is a step towards realisation of Welfare State. That such an assurance or even hope having been extended it appears the government should stick to it, and give shape to its intention of providing houses by :

i) directing Collector, Allahabad to get survey of the bungalows done within a period of two months, if possible, from the date copy of government orders is received by him and get a list prepared of all such dwellers.

ii) It may initiate necessary proceedings immediately for building a colony sufficient to house all such persons at one place.

iii) The colony should be constructed as soon as possible but not beyond five years.

iv) Houses so constructed should be settled or leased to such persons on such terms and conditions as may be determined by the government. But it should be reasonable and within their reach as a part of social and economic uplift.

v) Such persons shall not be evicted for a period of five years or till the colony is constructed whichever is earlier.

34. Before parting with these cases we express our profound thanks to Sri S.N. Kacker who led the arguments on behalf of petitioner. Sri Jagdish Swaroop, who concluded the arguments, and Sri S.P. Gupta, Sri S.N. Verma, Sri R.R. Agrawal, Sri K.N. Tripathi, Sri Ram Kant, Sri A.B. Saran, Sri Shambhu Chopra, Sri R.K. Gulati, Sri R.N. Bhalla, Sri S.C. Budhwar, Sri Gyan Prakash, Sri A.K. Banerji, Sri A.S. Kapur, Sri H.N. Tripathi. Sri Sridhar. We also are extremely grateful to Sri R.N. Trivedi, the learned Additional Advocate General, assisted by Sri Shitla Prasad, for the valuable assistance rendered by him in an upright and fair manner who was willing to produce every document and record and assist the Court at every stage in all possible manner

35. In the result these petitions succeed and are allowed. A direction is issued to opposite parties to :-

(i) grant fresh leases to all those who had deposited the premium or at least one installment on terms and conditions mentioned in 1959 Order read with 1960 Order

(ii) To issue notices to all those lessees to whom no notice was issued and determine their premium etc on terms and conditions mentioned in 1959-60 Orders expeditiously.

(iii) To determine premium etc of others to whom notices were issued but

it could not be finalised for one reason or other at any early date.

(iv) Determine rate of premium etc for premises which are used as residential cum commercial purpose in light of 1965 Order

(v) Determine rate of premium used for commercial purpose in light of various orders issued till 1965.

(vi) Lessees shall after grant of fresh teases file the necessary forms etc. within one month before the Prescribed Authority under Urban Ceiling Act, 1976 (Act 33 of 76) if it had already not been filed who shall proceed to decide the same as expeditiously as possible.

36. Parties shall bear their own costs

Petitions allowed.

Cases Referred.

1. AIR 1970 Mad 27
2. AIR 1953 SC 98
3. AIR 1979 SC 1415
4. AIR 1975 Andh Pra 315 (FB)
5. AIR 1978 Andh Pra 106 (FB)
6. AIR 1978 Andh Pra 106 (FB)
7. AIR 1975 SC 984