IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) NO. 2554/1997With CCP No. 372/1997, CONT.CAS (C) No. 551/2004 CCP NO. 206/ & WP (C) No. 5242/2000, & WP (C) No.2592/1997

Reserved on: July 6, 2006
Date of Decision: 18th September, 2006

1. **WP (C) No. 2554/1997**

SHRI NEKI .....PETITIONER

Through:. Mr. Ramesh Chandra, Sr. Advocate, with
Mr. Sumit Bansal, Advocate,

Versus

DELHI DEVELOPMENT AUTHORITY & ORS. ....RESPONDENTS

Through: Mr. Rajiv Bansal, Advocate,
Ms. Vibha Datta Makhija, Advocate,
Mr. V.K. Tandon, Advocate for R-1
Mr. Mahender Rana, Advocate for R-8
Ms. Latika Chaudhary for Respondents –Govt. of NCT
Ms. Manpreet Kaur, Advocate,

2. **CCP No. 372/1997**

SHRI NEKI .....PETITIONER

Through:. Mr. Ramesh Chandra, Sr. Advocate, with
Mr. Sumit Bansal, Advocate,

Versus

SHRI G.C. SHARMA & ORS. ....RESPONDENTS

Through: Mr. Rajiv Bansal, Advocate,
Ms. Vibha Datta Makhija, Advocate,
Mr. V.K. Tandon, Advocate for R-1
Mr. Mahender Rana, Advocate for R-8
Ms. Latika Chaudhary for Respondents –Govt. of NCT
Ms. Manpreet Kaur, Advocate,

3. **CCP NO. 206/1997**

SHRI NEKI ... PETITIONER

Through:. Mr. Ramesh Chandra, Sr. Advocate, with
Mr. Sumit Bansal, Advocate,

: Versus :

SHRI G.C. SHARMA & ANR. ... RESPONDENTS

Through: Mr. Rajiv Bansal, Advocate,
Ms. Vibha Datta Makhija, Advocate,
Mr. V.K. Tandon, Advocate for R-1
Mr. Mahender Rana, Advocate for R-8
Ms. Latika Chaudhary for Respondents –Govt. of NCT
Ms. Manpreet Kaur, Advocate,

4. **WP (C) No. 2592/1997**

SHRI SUBODH GUPTA & ORS. ... PETITIONERS

Through:. Mr. Ramesh Chandra, Sr. Advocate, with
Mr. Sumit Bansal, Advocate,

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Versus

DELHI DEVELOPMENT AUTHORITY & ORS. ... RESPONDENTS

Through: Mr. Rajiv Bansal, Advocate,
Ms. Vibha Datta Makhija, Advocate,
Mr. V.K. Tandon, Advocate for R-1
Mr. Mahender Rana, Advocate for R-8
Ms. Latika Chaudhary for Respondents –Govt. of NCT
Ms. Manpreet Kaur, Advocate,

5. **WP (C) No. 5242/2000**

DAYA NAND & ANR. ... PETITIONERS

Through : Mr. R.P. Bansal, Sr. Advocate,
with Mr. D.S.Khatri. Advocate

Versus

UNION OF INDIA & ORS. ... RESPONDENTS

Through: Mr. Rajiv Bansal, Advocate,
Ms. Vibha Datta Makhija, Advocate,
Mr. V.K. Tandon, Advocate for R-1
Mr. Mahender Rana, Advocate for R-8
Ms. Latika Chaudhary for
Respondents –Govt. of NCT
Ms. Manpreet Kaur, Advocate,
Mr, Ramesh Chandra, Sr. Advocate,
with Virender Kumar Sharma for R-8,

6. **CCP NO. 551/2004**

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RAJ ROOP RANA & ANR. ...
PETITIONERS

Through : Mr. R.P. Bansal, Sr. Advocate, With
Mr. Rakesh Mahajan, Advocate.

Versus

SHRI G.K. MARWAH & ORS. ... RESPONDENTS

Through: Mr. Rajiv Bansal, Advocate,
Ms. Vibha Datta Makhija, Advocate,
Mr. V.K. Tandon, Advocate for R-1
Mr. Mahender Rana, Advocate for R-8
Ms. Latika Chaudhary for
Respondents –Govt. of NCT
Ms. Manpreet Kaur, Advocate,

CORAM:

HON'BLE MR.JUSTICE S.RAVINDRA BHAT

1. Whether reporters of local papers may be allowed to see the judgment.? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

S. RAVINDRA BHAT, J.

1. These rival writ proceedings claim contrary reliefs. However, both involve adjudication of common questions of fact and law. With consent of counsel for all parties, they were heard together; they are dealt with in this common judgment.

2. The petitioners in earlier writ petition (*Shri Neki -vs- DDA CWP 2554/1997, and Subodh Gupta & Ors. Vs. Delhi Development Authority & Ors. CWP 2592/1997* hereafter referred to, collectively, as "Neki") impugn the consolidation proceedings carried out by the third respondent (hereinafter referred to as "the Consolidation Officer") in Village-Singhola. It alleged that the Consolidation Officer acted *malafide* and created false records of the consolidation scheme, which was not confirmed. The consolidation proceedings, which had been pending since 1988, were sought to be concluded, finalized and confirmed in a span of 7 days. The proceedings had been stayed till 23/5/1997 in WP (C) No.1956/1997.

3. The petitioners alleges that once consolidation proceedings commenced, no agricultural land could be transferred or sold without the permission of the Consolidation Officer. They cite several instances, and alleges

that permissions were granted, and resulting in benefit to one family to the extent of 32 industrial plots and 34 residential plots. It is also alleged that the Committee constituted by the Consolidation Officer constituted of persons who were not landowners in the village. It is alleged that at no point of time was any draw conducted by the Consolidation Officer, when as per the Scheme such a draw had to be conducted.

4. The petitioners also alleges that the area in question was declared as "development area" as per provisions of the Delhi Development Act, 1957 and thus, no development could be permitted in the village. Further, the lands, which had been acquired, continued to be part of the scheme. The acquisition was also on the basis of the old Khasra numbers which resulted in confusion in the mind of the land-owners.

5. The petitioners allege that the amended rules in particular Rule 6 (j) (1&2) were contrary to each other and illegal and ultra-vires. They contends that the Zonal Plans had been prepared for the area and the land under the consolidation proceedings was cleared for the development of Narela Township. The Petitioners aver that continuation of the consolidation proceedings was fraud

upon the public and the power. In addition, the Petitioners urge that due publicity had not been given to the final scheme, and objections had not been sought from the interested parties.

6. During pendancy of the writ petition in Neki, certain interim orders were issued, and the Lt. Governor issued an order on 17.05.2000. That order has been impugned in the second writ petition, *(Dayanand -vs- Union of India WP 5402/2000,* hereafter referred to as *"Dayanand").* The impugned order agreed, therefore, with the recommendation of the Divisional Commissioner that the consolidation scheme be revised. The Lt. Governor directed, that while issuing a revised scheme, the following had to be taken into consideration:

> *"(a) The revised norms concerning the maximum size of residential plots and prohibition on allotment of industrial plots.*
>
> *(b) The points mentioned in the inquiry report of the Deputy Commissioner.*
>
> *(c) It has to be ensured that for the residential area allotted in the extended Lal Dora commensurate amount of agricultural land is ceded. It has to be particularly ensured that in the entire process of consolidation the Gaon Sabha is not casualty."*

7. Dayanand impeaches the legality and justification of the impugned order on the ground of arbitrariness, violation of imperative provisions of law, and action taken on the basis of non-application of mind. The petitioners in this set of proceedings justify the consolidation proceedings, and the action of the Consolidation officer, particularly in re-partitioning the properties; it is alleged that all suitable and proper steps, as per provisions of the East Punjab (Consolidation and Prevention of Fragmentation of Holdings) Act, 1948 (hereinafter called "the Act") were taken. The scheme was prepared, and finalized after hearing the views and objections of all concerned, and allocations were made in the consolidation proceedings, in accordance with the Act. It is alleged that no one had voiced any objections or grievances at the time of finalization of the scheme, which was made known to all concerned parties.

8. The petitioners in *Dayanand* also allege that the petitioner in the *Neki* batch could not claim to be aggrieved; they had not objected to the scheme. It re-partition was effected between 26-5-1997 and 3-6-1997. 212 right holders were handed over physical possession, and those persons entered into possession.

9. Dayanand alleges that the impugned order dated 17-5-2000 is based on inconclusive surmises, and vague assumptions. It could not be the basis of a decision to revise the consolidation scheme and virtually re-write the re-partition of properties, which had attained finality. In the absence of objections, the authorities did not possess jurisdiction to interfere with the legitimate rights of landowners who had secured possession of their respective plots.

10. The Petitioner in *Dayanand* also alleges that the impugned order violates Section 42, and was issued without notice to or reasonable opportunity of hearing to the affected landowners. Thus, the order was illegal and unsustainable.

Brief facts emerging from pleadings

11. On 1st September, 1988 a notification under Section 14 of the Act, was issued declaring the intention to make a scheme for consolidation of holdings, inter alia for village Singhola, Delhi. Consolidation officers were appointed, on 13th April, 1989 to take steps pursuant to the notification, as per Section 14(2) of the Act. Apparently, intervening steps were initiated by

appointing an advisory committee, etc. On 21st March, 1990, the notification was annulled. Again, on 24th August, 1990 the Delhi Administration by its notification re-notified Singhola Village for initiating Consolidation Proceedings in terms of Section 14 (1) of the said Act. Draft rules, to carry out consolidation were issued on 13-8-1991.

12. On 10th June, 1992, the Consolidation Scheme in respect of village Singhola was announced. On 19th March, 1993, a notification was issued by the Union of India by which the area which had been notified to be extended as Abadi area, was sought to be acquired by the Union of India for the planned development of Delhi in terms of the provisions of Sections 4,6 and 17 of the Land Acquisition Act, 1894. A Memorandum dated 28-4-1993 was issued, issued stating that in view of the proposed acquisition of land in the South of the Village, it would not be possible to extend the Abadi in the South of the Village. It was made clear that the villagers may submit their demands for residential plots in the North direction within a week's time to the Consolidation Officer so that proposal for the amended scheme be submitted to the Settlement Officer.

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13. On 23rd May, 1993, the consolidation scheme was revised. Later, on 14th July, 1993,the Consolidation Officer again published the draft scheme in terms of Section 19(1) of the Act as amended under Section 36 of the Act. This was apparently confirmed by the Settlement Officer on 14th July, 1993. The Consolidation Officer who is duly competent and empowered under the Act carried on the necessary proceedings. Alleging that the scheme the of re-partition was not as per the provision of Section 21 of the Act, Writ Petition No.5024 of 1993 titled as *Sh. Lachi Ram Jain Vs. Delhi Administration & Others* was filed before this Court. Later, re-partition was done between 6th September, 1993 and 15th September, 1993. However, the scheme itself was revoked/cancelled soon thereafter. On 25th March, 1994, Writ Petition No.5024 of 1993 was dismissed as withdrawn.

14. On 12th June, 1996, amended rules, under the Act were circulated according to which the owner of the land falling under the Abadi area would be

entitled to receive land in the ratio 1:2. On 3rd July, 1996, a general body meeting was called in the Village Chopal for constitution of the Advisory Committee, which was attended by the villagers; a 17 member Advisory Committee was appointed by Resolution No.24. By resolution No. 29, dated 5-8-1996, the draft scheme of Consolidation was published under Section 19 of the Act by the Consolidation Officer in the general body meeting of the villagers in the village Chopal attended by the Villagers.

15. It is alleged, and not disputed by the official respondents, that on 14th March, 1997, a draft scheme was published and thereafter confirmed by the Settlement Officer (Consolidation) in terms of Section 20 (3) of the Act 1948. Apparently, on the footing that there was no objection to the draft approved scheme, the same was accepted on 1-4-1997, by resolution No. 35.

16. On 9-5-1997, WPNo.1956 of 1997 was instituted by one Shri. Ved Prakash before this Court challenging the consolidation proceedings, on identical grounds as in *Neki;* an interim order was issued restraining the respondents from concluding Consolidation proceedings. This writ petition was, however,

dismissed on 23-5-1997, as withdrawn. Soon thereafter, on 26th May, 1997, by Resolution No. 36 and on the vacation of the interim orders and Writ Petition No.1956 of 1997 repartition proceedings under Section 21 of the Act commenced. As per *Dayanand, (* a fact hotly contested in *Neki)* repartition concluded on 2-6-1997, and allotments were made to a large number of plot holders, on 2nd June, 1997. *Orders issued by this court in Neki's case*

17. The petition in *Neki* was listed before the court on 13.06.1997. The following interim order was issued:

> "*Present : Mr. Ramesh Chamba, Sr. Advocate, with Mr. Anand Yadav for the Petitioner. Mr. Ram Dhan for the respondent -DDA*
>
> *CWP No. 2554/97*
>
> *Issue Notice to the respondents to show cause as to why the writ petition should not be admitted, returnable on 12th August, 1997.*
>
> *CM No.5075/97*
>
> *Issue notice to the respondents for 12th August, 1997.*
>
> *Until the next date of hearing, no final order shall be made by respondent No.3 under Section 21 of the East Punjab Holdings*

(Consolidation and Prevention of Fragmentation) Act, 1948,

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Dasti
June 13, 1997 *Cyriac Joseph*
(Vacation Judge)"

On 18.06.1997, the court directed the third respondent not to deliver possession of any of the plots in question. Later, on 5.11.1998, the following order was issued, in the light of the contention of the parties, with reference to the issue of whether the consolidation proceedings in the area, notified as a "development area" could be continued. The order reads as follows:

"05.11.1998

Present : Mr. Anand Yadav Ms. Geeta Mehrotra for the Petitiner
Mr. Pradeep Jain for the applicant/respondent.
Mr. A.K. Nigam for respondents 2 and 3
Vibha Datta Makhija for the impleaders.

CW 2554/97 & CM 9795/98

List the matter for hearing on 15th December, 1998.

In the meantime, the pleadings shall be complete both in the writ petition as well as in the applications. Learned counsel for the DDA states that no consolidation should be allowed to be carried out as the land is needed for extension for Integrated Freight Complex at Narela. However the stand of the learned counsel for the Delhi Administration is that the consolidation proceedings must go on as it will delay the proceedings thereby adversely affecting interests of the villagers.

In the circumstances, I consider it appropriate to directed the Vice Chairman, DDA and the Secretary, Revenue Land and Building and also Law Secretary. Delhi Administration to hold a

meeting so that it lends clarity to the stand of the Government. The meeting should take place on or before the next date. Learned counsel for the petitioner states that he will supply a copy of the writ petition to the learned counsel for the Delhi Administration. Interim order to continue.

November 5, 1998

Anil Dev Singh, J"

The inquiry report leading to the order in Dayanand

18. During pendancy of proceedings in *Neki,* the Lt. Governor apparently directed an inquiry into alleged irregularities into the re-partition process, in the consolidation proceedings. The Dy. Commissioner of the concerned area was asked to conduct an enquiry and submit a report. The report was submitted; it led to the issuance of the order dated 17-5-2000, assailed in *Dayanand.* The enquiry report is on record; relevant portions of the report (which contain the terms of reference, and recommendations) are extracted below:

"ENQUIRY REPORT

As desired vide note dated 28.01.2000 by the Secretary to Lt. Governor, Delhi an inquiry has been conducted by the

undersigned into the consolidation and acquisition proceedings in village Singhola, sub-Division Narela, District North-West, Delhi. The terms and reference of this inquiry are placed at Annexure -1.

CONSOLIDATION :

From the record available in the Tehsil Office, it surmises that the consolidation proceedings were initiated twice in this village, once in September, 1988 and then in July, 1996. A chart of the main dates of the two sets of proceedings as entered in the respective consolidation register is placed at Annexure -II. It would be seen that repartition proceedings under Section 21 (1) of the East Punjab Holdings (Prevention and Fragmentation) Act, were undertaken between 06.09.93 to 15.09.93 in proceedings were dropped and resumed again in the year 1996. it is the proceedings in the second instance that have been referred to in the terms and reference of this inquiry and are being covered in the details given below, corresponding to serial No.1 of the order of Inquiry.

2. As per the entries recorded in the consolidation proceedings register (II), during the proceedings of repartition under section 21 (1) between 26.05.1997 and 02.06.1997, 169 residential plots and 187 industrial plots were carved out and recorded. Out of 169 residential plots, 105 were of the size of 2 bigha and 2 Biswas each, while 64 plots were of miscellaneous sizes. Details of these 169 plots and of miscellaneous sizes of 64 plots are available at Annexure – III A &B. All the 187 industrial plots were of 6 biswas each, details at Annexure -IV. As per resolution No. 33, in all 06 khasra Nos. were taken in Kayami (confirmation in situ) done in the extended Abadi, whose details are available at Annexure -V. Total areas of residential plots was 313-03 bighas and of all industrial plots 2 was 56-02 bighas. Residential Kayamis were in 11-05 bighas. The grand total comes to 380 bighas 10 biswas.

The possession of all these plots is shown as handed over on 03.06.1997 in the consolidation proceedings register, signed by

A.C.O. Under resolution No.36 (number used twice in the proceedings). It bears signatures of 212 effected persons. A further resolution No.37, dated 03.06.1997, records the presence of 273 persons confirming the distribution of pass books to them on the same date. These two resolutions imply that :-

a) All this was done physically on one day itself, i.e. 03.06.97, and with the consent of all right holders shown present and signing the same day.

3. As per the details available in this Register, following officials were associated with the consolidation proceedings.

1. *Sh. G.C. Sharma Consolidation Officer*
2. *Sh. S.P. Chawla Assistant Consolidation Officer*
3. *Sh. Ram Kishan Kanungo*
4. *Sh. Rajender Kumar Patwari*
5. *Sh.; Harish Kumar Patwari.*

Xxxxxxxx xxxxxxxxxxxx xxxxxxxxxxxx

(B) As for the area of possession reportedly given after consolidation, if has to be appreciated here that the details given above cover only the area that is included in the Abadi Deh (initial Lal Dora at the the time of settlement), the phirni (extended Lal Dora in 1951 – 52 and the extended phirni area (under this Consolidation). This includes plots carved out and allotted under residential, industrial and Kayami categories, However, as per the register, there were 383 Khatas in all in this village, out of which 212 have been recorded as having been given individual possession and 273 as being given the pass books also on 03.06.1997. These will also cover a vast area of agricultural land, the details of which have not been furnished above, but have been reflected in this map in sky blue colour, as distinct from the red colour which covers the plotted area. If any further identification of possession of agricultural holding, as distinct form plots, is desired that will require the following additional details :

I) Identification of khatadras in these 383 Khatas with individual details of their holdings both agriculturalas well as in the extended phirni.

II) Since the possession has been shown to 212 person, whose names alone have been given, their identification of holdings as after consolidation proceedings.

III) Identification of the holdings of both kind of 273 persons shown as receiving pass books.

As mentioned before, it is not clear whether all these details are required to be furnished in this inquiry. If that be so, it would need a physical survey of the entire village Khasrawise, syncherinised with verification of pass books. This alone will establish the position of physical possession on ground vis. - a vis what has been shown on record. This will require substantial additional time. Of course, this will also require active co-operation of the Khata holders, which may not be forth coming easily, and from all, as would be clear after perusal of the findings of this inquiry which follows :

Nonetheless a sample survey was got conducted in respect of the holdings inside and outside the Lal Dora, which indicates that a mixed possession may be obtaining on ground, mixed meaning as prior to consolidation and as after that. Much resistance was offered during the sample survey.; a complete survey will require detailing additional field staff and precautions on the law and order side.

COURT CASES :

During the course of this inquiry it has been brought to my notice that the proceedings of consolidation have been stayed by the Hon'ble High Court of Delhi vide its order dated 13.06.1997 and subsequently a contempt petition has also been filed against the consolidation officer. The Court is understood to have also set up a committee of GNCTD and DDA functionaries. Copies of some of these order are placed at Annexure – VIII-A, B,C & D.

FINDINGS

Before I record findings, which are in respect of item No. (1) of the terms of reference and based on the consolidation proceedings register No.2 (photocop0y placed as Annexure No.IX), I may underline that the writ petition referred to above is understood to be hearing into the merits of consolidation are not a part of these findings (nor was this included in the terms and reference desiring this inquiry).

Certain aspects which arouse curiosity and have come to the fore on perusal of the consolidation register are as follows :-

I) The register has not been serialised.
II) Pages have been left blank between resolutions.
III) Pages have been left blank even with in the course of one resolution, that too even in the most important proceedings of repartition as from 26.05.1997 to 02.06.1997.
IV) Resolution Nos. have been repeated (No.36) also and there are contradictory resolutions (25,27,30) too.
V) While the initial proceedings have the signatures of more than one functionary, including and specially those of the Consolidation Officer, the later and material proceedings have only one signature, purportedly that of the A.C.O.
VI) The signatures of A.C.O. Need verification.
VII) The proceedings from 26.05.97 to 02.06.97 have not been concluded/singed and when shown as concluded not signed.

VIII) Resolution Nos. 36 (second of this number) and 37 have been recorded purportedly on 03.06.97. However, a scrutiny shown that some signatures carry dates subsequent to 03.06.97.
IX) 273 pass books have been shown distributed and 212 possession claimed given in one day.
X) Most surprising fact is the non-signing of the repartition, the possession and the pass books distribution proceedings by the Consolidation Officer, who has although signed proceedings that

variously preceded.

Concluded."

19. The order impugned in *Dayanand* was issued, on 17th May, 2000, on the basis of the above enquiry report. The order reads as follows:

"ORDER

The inquiry report of the Deputy Commissioner dated 2 March 2000, which has been sent by the Divisional Commissioner and is placed in a separate file below, is of an interim nature. Still, it points out several incongruities, which raise doubts about the correctness of the consolidation proceedings. I agree, therefore, with the recommendation of the Divisional Commissioner that the consolidation scheme be revised. While doing so the following will have to be kept in view :

(a) The revised norms concerning the maximum size of residential plots and prohibition on allotment of industrial plots.

(b) The points mentioned in the inquiry report of the Deputy Commissioner.

(c) It has to be ensured that for the residential area allotted in the extended Lal Dora commensurate amount of agricultural land is ceded. It has to be particularly ensured that in the entire process of consolidation the Gaon Sabha is not casualty.

This may be brought to the notice of the Court, which has already stayed any further action under the previous scheme. A self explanatory submission should be made to the Court in this behalf, including the inquiry report of the Deputy Commissioner.

Lt. Governor of Delhi

17.05.2000"

20. In *Neki,* the Consolidation Officer, impleaded as a party respondent, defended the regularity of the proceedings, including re-partitition, and alleged that the petitioner had not preferred any objections, and also averred that objections to re-partition were pending consideration. None of the parties likely to be affected were impleaded; later, however, applications were moved, and some landowners, alleging to be aggrieved by the interim orders in the proceedings, since their right to possession was held up, defended the correctness and legality of the proceedings.

21. The Government of NCT, in the counter affidavit to *Dayanand,* defended the action of the Lt. Governor. It however, admitted that possession had been handed over to some landowners. Nevertheless, it was averred by the Government, that the enquiry led to formation of opinion that the scheme had to be varied. The basic facts relating to issuance of the draft notification, finalization of the scheme and the factor that none had objected, were admitted. However, it

has been averred that even without objections, the Government could, on an overview of the circumstances, arrive at independent conclusions that the manner of conduct of re-partition led much to be desired, and therefore, it decided to vary the consolidation proceedings.

Contentions in Neki

22. It was contended by Mr. Ramesh Chandra, learned Senior Counsel and Shri Sumit Bansal, that the Consolidation Officer in his affidavit filed admitted that certain objections under Section 21 (2) of the Act had been received and were pending consideration. It is submitted that the said affidavit, has nowhere alleged that possession of the plots were handed over by the Consolidation Officer. Counsel also placed great reliance on the affidavit filed before the Court in CCP No.206/1997, where it was averred that no possession was delivered after passing of the orders dated 13.06.1997 and 18.06.1997. Here, too, counsel submitted that the Consolidation Officer has not stated that possession was handed over under Section 23 of the Act. Thus, it is the submission of the petitioner that in fact, no possession was handed over and the

records were somehow manipulated.

23. Learned counsel submitted that since the procedure prescribed under the Act for publication of the Scheme has not been complied with, the scheme had no legal affect. It is also alleged that considering the large-scale irregularities in the scheme, the Lt. Governor appointed an Inquiry Officer, who submitted his report on 02.03.2000. That document, it is submitted, vindicates the allegations about large scale irregularities, and records that the pages had been left blank between resolutions. One of the aspects in the Report was that even the signatures of the A.C.O. needed verification. It was submitted that serious fabrications of documents and manipulations of records were noticed.

24. Learned counsel contended that the pass-book distribution proceedings, were not signed by the Consolidation Officer. The Lt. Governor, it was submitted, after perusing the materials was of the opinion that the said Report pointed out several incongruities, which raised doubts about the correctness of the consolidation proceedings and thus, issued the order dated 17.05.2000 with the recommendation to the Divisional Commissioner that the consolidation scheme be revised. The petitioners in *Neki* strongly rely on the

report, and the action of the Lt. Governor, in issuing the order dated 17-5-2000.

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25. Learned counsel submit that under Section - 42 of the Act, the power vested with the Lt. Governor can be exercised without giving the interested parties notice to appear when the Lt. Governor is satisfied that the proceedings have been initiated by unlawful considerations. The word - "unlawful" means the act which is contradictory to law or is unauthorized or is irregular and against the rule. The expression "consideration" it is submitted, is defined in the Oxford Dictionary as thoughtfulness of facts or things taken into account. It the present case, the fact and things, which have been taken into account, are unlawful exercise of power, for oblique motive and for the said reason, the Lt. Governor after applying his mind to the same concluded that there are several incongruities and the scheme is liable to be revised.

26. Learned counsel submitted that no purpose would be served by continuing with the present consolidation proceedings inasmuch as the land sought to be included, in the consolidation proceedings was notified under Section -4 of the Land Acquisition Act through Notification dated 23.02.2006 and 15.05.2006.

Contentions in Dayanand

27. Shri R.P. Bansal, learned senior counsel, and other counsel (appearing for parties impleaded in as parties likely to be affected) urged that the decision to vary the scheme adversely affected a large body of villagers. The counsel relied on copies of the resolutions issued at the relevant time, and submitted that more than 200 landowners were allotted plots during repartition. None of them were issued notices that the proceedings were in any manner vitiated. It was submitted that the impugned order dated 17-5-2000, was not only illegal as not confirming to Section 42, (which mandated prior notice), but amounted to divesting rights of the landowners without affording them any opportunity. The Lt. Governor could not have dispensed with the requirements spelt out in the proviso, unless the conditions were fulfilled, and there was either some material recording that the consolidation or part of the proceedings were vitiated for unlawful consideration. In the absence of such a determination, the plea of the process being vitiated, or in any manner illegal, could not be entertained.

28. Counsel for the petitioners in *Dayanand* submitted that mere irregularities did not warrant a decision to dispense with the requirement of

notice and hearing of parties who had benefited under the scheme. As on the date of issuance of the impugned order, admittedly a large number of villagers had been issued plots, and were in the village. If their allotments had to be varied, or cancelled, the Gaon Sabha or any revenue authority, including the Financial Commissioner could do so only after issuing notice, and granting hearing. The procedure was not followed. The surrounding circumstances in the case did not entitle the Lt. Governor to dispense with a hearing; even reasons were not detailed, or disclosed to the petitioners.

29. Learned counsel submit that instead of filing an appeal, and exhausting the legal remedies available under the Act the petitioner approached this Court with writ proceedings, in *Neki,* which ex-facie are not maintainable in view of the Sections 19, 21 and Section 44 of the Act, which bar the jurisdiction of the Civil Court with regard to the matters arising under the Act. On 22nd May, 1997, 2nd June, 1997 repartition of lands took place under Section 21 and all villagers were allocated new Khasra Nos; possession and the land was handed over on 3rd June, 1997 pursuant to which Chakbandi copies were given to the

villagers. Due to stay order passed in the writ Petition, no possession was handed over till date to many right-holders to which there is no clarity of ownership of the land and hence no cultivation has been carried out from the last many years prejudicing the interest of the contesting respondent No.8 beside other villagers.

30. Before dealing with the contentions, it would be necessary to notice minutes of a meeting dated 2-2-1999, of the DDA issued pursuant to orders of court, in *Neki,* requiring DDA to hold a joint meeting, and decide whether consolidation proceedings can be continued. The said decision is extracted below:

> *"Delhi Development Authority*
> *Office of the Vice-Chairman,*
>
> *No.F.PS/VC/DDA/99/49* *February 2, 1999*
>
> *The Second meeting to thresh-out the problems relating to consolidation of land at Shinghila Village and for that matter of any village failing within the project area of the DDA was held today. The following officer were present :-*
>
> *1. Secretary (Revenue), GNCTD*
> *2. Commissioner (Plg)*
> *3. Commissioner (LM)*

4. *Chief Legal Advisor*
5. *Director (LM) HO*

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After detailed discussion, the following decisions were taken :-

In principle, we do not object to the extension of Village sites taking recourse to the provisions of the East Punjab Holding (Consolidation and Prevention of Recommendation) Act, 1948.

However, such extended area has got to abide by the development norms. To elaborate. In such extension meant for village site, Industrial development will not be permissible.

We should also enforce building bye laws in such extended area otherwise immediately adjacent tot he Development Area we create pockets of High Density and in some time even high rise development bringing in an element of anomaly.

For the above steps, MCD has also to pass suitable directives.

If by any chance such extension is affecting the major road net work of the project area or any of the facilities like later service, sewer service, storm water drain service or reservation for any of the pumping station, then the extension path has got to be suitably modified.

For the future, any extension programme should be subject to the clearance of a committee consisting of representative of Delhi Govt. DDA and MCD. Similar policy should be followed in respect of acquisition also.

Sd/-
(PK Ghosh)
Vice-Chairman

02.02.99
Commr. (Plg).
C.L.A."

Points for considerations

31. The following points arise for consideration:

i) Whether consolidation proceedings could be continued, after the area was declared as a development area, in terms of the Delhi Development Act, 1957;

ii) legality and correctness of the repartition proceedings, and the order dated 17-5-2000.

Point No. 1

A Division Bench of this Court, in the decision reported as *UMED SINGH v. GOVERNMENT OF N.C.T. OF DELHI & ORS* 69 (1997) DLT 957 (DB), had occasion to deal with the interplay between provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, and Section 12 of the Delhi Development Act. The court held as follows:

> *"15. Issuance of any notification under the provisions of Section 12 of the Delhi Development Act also cannot affect the legality and validity of the consolidation proceedings. The effect of such a*

notification at the most would be that no development of land can be undertaken or carried out in any area of the village by any person including the Government Departments except with the consent of the authority constituted under the Delhi Development Act. Carrying out of repartition under the provisions of the Consolidation Act is not an act of development of land. Repartition is carried out for the purposes of consolidating of holdings, which by no stretch of imagination would amount to development within the ambit of the provisions of Delhi Development Act in which the word "development" has been defined in 2(d) Section as under:

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"development" with its grammatical variations means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in any building or land and includes redevelopment."

32. The reasoning in *Umed Singh's case* has found favour in another decision of the Division Bench, on this issue. The reasoning that issuance of a notification under Section 12 of the Delhi Development Act, does not bar exercise of power in under the Consolidation Act; the one does not necessarily contradict or conflict with the other power. I am bound by the ruling of the Division Bench. This point is answered accordingly; issuance of a notification under Section 12 of the Development Act does not bar consolidation proceedings.

33. It has been held (*Roop Chand -vs- State of Punjab AIR 1963 SC 1503; State of Punjab -vs- Suraj Prakash Kapur, AIR 1963 SC 507; Swaran Singh v. State of Punjab,* (1994) 3 SCC 544) that the object of the Act is consolidation of holdings and prevention of fragmentation, to improve agriculture operations. The Act is aimed at addressing the problem created by uneconomic and fragmented agricultural holdings, by a series of partitions. The Act provides for consolidation of holdings. To achieve the objective, provisions of the Act have created a machinery which provide for putting all the holdings in a village in one notional kitty, valuing each holding, and then, repartitioning them, in accordance with the evaluation with a provision of compensation to equalise the values. Chapter III deals with consolidation of holdings. Under the Chapter the State Government declares its intention to make a scheme for consolidation of holdings. Later a scheme is prepared by the Consolidation Officer after ascertaining views of landowners. Under Section 15, the scheme has to provide for compensation. After preparation of the scheme, objections are called for

from landowners and is in view of the objections/ representations, the scheme can be amended by the Consolidation Officer and the Settlement Officer who is a higher official. The scheme, as finally drafted, is to be confirmed by the Settlement Officer. After preparation of the scheme its confirmation, and its publication, the land is put in hotch-potch and repartitioned in accordance with the scheme of consolidation and with the advice of the landowners.

34. At the stage of re-partition, the parties are given another chance to iron out emerging differences; officers are empowered to look into the grievances of any aggrieved person in regard to repartition and that is provided in s. 21 of the Act. An objection can be lodged in the first instance by any person aggrieved by the repartition before the Consolidation Officer and any person aggrieved by the order of the Consolidation Officer can appeal to the Settlement Officer (Consolidation). If a grievance survives decision of the Settlement Officer, the party concerned can appeal within the time specified, to the State Government

and there the machinery for appeals stops and subject to that appellate order the order of the Settlement Officer is final.

35. After repartition has been finally sanctioned under the provisions of the Act and has been effected a new record of rights has to be prepared and then if all the land-owners agree to enter into possession in accordance with the scheme of repartition possession is given to the land owners and if they do not agree to enter into possession, then, possession is to be taken by the landowners at the commencement of the agricultural year following the date of the publication of the final scheme; they have to be put into physical possession of the holdings and would be entitled to the standing crop on payment of such compensation as my be determined. Under Section 24 as soon as possession is taken in accordance with the provisions of the Act the scheme shall be deemed to have come into force. Provision is then made in regard to encumbrance of the landowners and tenants. Provision is also made for apportionment of compensation.

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36. The Petitioner in *Neki* has alleged irregularities in the consolidation proceedings, such as in the manner of publication of the draft scheme, its finalization, and the re-partition proceedings. However, not all those allegations have been supported by the Govt. of NCT, in the inquiry report, or in the counter affidavit in *Dayanand.* The main allegations pertain to the regularity of proceedings in re-partition, which, according to the records produced, took place between 26-5-1997 and 3-6-1997, but were alleged to have taken place on one day, i.e 3-6-1997. This circumstance has been relied as a strong pointer to the improbability of such an exercise, when 212 rightholders' entitlements were dealt with.

37. The inquiry report of the Dy. Commissioner, which forms the basis of the impugned order in *Dayanand,* lists the following lacunae or irregularities:

> *"I) The register has not been serialised.*
> *II) Pages have been left blank between resolutions.*
> *III) Pages have been left blank even with in the course of one resolution, that too even in the most important proceedings of repartition as from 26.05.1997 to 02.06.1997.*

IV) Resolution Nos. have been repeated (No.36) also and there are contradictory resolutions (25,27,30) too.

V) While the initial proceedings have the signatures of more than one functionary, including and specially those of the Consolidation Officer, the later and material proceedings have only one signature, purportedly that of the A.C.O.

VI) The signatures of A.C.O. Need verification.

VII) The proceedings from 26.05.97 to 02.06.97 have not been concluded/singed and when shown as concluded not signed.

VIII) Resolution Nos. 36 (second of this number) and 37 have been recorded purportedly on 03.06.97. However, a scrutiny shown that some signatures carry dates subsequent to 03.06.97.

IX) 273 pass books have been shown distributed and 212 possession claimed given in one day.

X) Most surprising fact is the non-signing of the repartition, the possession and the pass books distribution proceedings by the Consolidation Officer, who has although signed proceedings that variously preceded. Concluded."

38. In the earlier part of the report, the Inquiry officer had stated that regarding the area of possession reportedly given after consolidation, the details given covered only the area included in the Abadi Deh (initial Lal Dora at the the time of settlement), the phirni (extended Lal Dora in 1951 – 52 and the extended phirni area (under this Consolidation). These included plots carved out and allotted under residential, industrial and Kayami categories. As per the register, it was noted that there were 383 Khatas in the village, out of which 212

had been recorded as having been given individual possession and 273 as being given the pass books, on 03.06.1997.

39. The report went on to observe as follows, about the lands re-partitioned in the consolidation proceedings:

> *"These will also cover a vast area of agricultural land, the details of which have not been furnished above, but have been reflected in this map in sky blue colour, as distinct from the red colour which covers the plotted area. If any further identification of possession of agricultural holding, as distinct form plots, is desired that will require the following additional details :*
>
> *I) Identification of khatadras in these 383 Khatas with individual details of their holdings both agriculturalas well as in the extended phirni.*
>
> *II) Since the possession has been shown to 212 person, whose names alone have been given, their identification of holdings as after consolidation proceedings.*
>
> *III) Identification of the holdings of both kind of 273 persons shown as receiving pass books.*
>
> *As mentioned before, it is not clear whether all these details are required to be furnished in this inquiry. If that be so, it would need a physical survey of the entire village Khasrawise, syncherinised with verification of pass books. This alone will establish the position of physical possession on ground vis. - a vis what has been shown on record. This will require substantial additional time. Of course, this will also require active co-operation*

of the Khata holders, which may not be forth coming easily, and from all, as would be clear after perusal of the findings of this inquiry which follows :

Nonetheless a sample survey was got conducted in respect of the holdings inside and outside the Lal Dora, which indicates that a mixed possession may be obtaining on ground, mixed meaning as prior to consolidation and as after that. Much resistance was offered during the sample survey.; a complete survey will require detailing additional field staff and precautions on the law and order side."

40. A careful analysis of the above reveals that the inquiry did not physically verify the state of records, vis-a-vis pass books, nor was a survey carried out. No attempt was made to verify whether any individual had indeed obtained possession, or whether the entire exercise was a sham, and hence tainted. A "sample survey" was conducted; no details of what was the nature of such survey, or the number of holdings evaluated, are available. In fact, the inquiry officer himself appears to be unclear as to what was required of him, as he candidly states that a complete exercise would involve physical verification, and examination of pass books.

41. Apart from the above infirmities, there is one, more fundamental objection to the entire exercise, which led to variation of the scheme in 2000,

which affected rights of a large number of landowners. The repartition, which ended in 1996, was sought to be re-opened in 2000.

42. The Financial Commissioner exercised power under Section 42 of the Consolidation Act. That provision reads as follows:

> *"42. Power of Chief Commissioner to call for proceedings.—The Chief Commissioner may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under this Act, call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:*
>
> *Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."*

43. Recently, in *Rajender Singh -vs- Financial Commissioner 122 (2005) DLT 151,* this court had occasion to examine the correctness of an order issued by the Financial Commissioner, under Section 42, without granting a hearing to the affected parties, and without recording a specific determination that hearing had to be dispensed with, because in his opinion, the order sought to be corrected had been issued for unlawful

consideration. It was held as follows:

> *"An integral component of the principles of natural justice is the right to be heard (Audi alteram partem rule). This has two facets; the right to a notice and the right to reasonable or sufficient opportunity. The right to notice has been described in a Constitution Bench judgment of the Supreme Court, in I.J. Rao, Asstt. Collector of Customs v. Bibhuti Bhushan Bagh, AIR 1989 SC 1884 as follows:*
>
> *"The right to notice flows not from the mere circumstance that there is a proceeding of a judicial nature, but indeed it goes beyond to the basic reason which gives to the proceeding its character, and that reason is that a right of a person may be affected and there may be prejudice to that right if he is not accorded an opportunity to put forward his case in the proceedings."*
>
> *More recently, in Canara Bank v. Debasis Das, AIR 2003 SC 2041 Supreme Court held as follows:*
>
> *"The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable*

opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play."

40. The negative nature of the power, or the prohibition in its exercise, in Section 42 makes it incumbent on the Financial Commissioner, to issue notice. The present is not a case where the statute is silent; it imperatively requires the authority to issue notice, if an order is sought to be varied; the notice has to be issued to the person interested. Therefore, there is no question about the requirement; the terms of the statute itself are categorical in this respect. The exercise of power is conditioned upon issuance of notice.

41. The contesting respondents have urged that the condition of notice was waived, by the petitioners. Reliance was placed upon the judgment of the Supreme Court in Virgo Steels case (supra) for the purpose. It is true there are observations in the judgment which suggest that where a provision exists in a statute casting obligation to hear a party, that person or party can waive it, if the statutory provision is conceived primarily for his benefit.

42. The question therefore is whether Proviso to Section 42 was designed merely as a benefit to an individual or class of individuals likely to be affected by variation of an order or a scheme, or conceived in the interest of general public. Here again, the nature of the order coupled with the choice of language used in the provision are crucial. In Johri Mal v. Director of Consolidation, AIR 1967 SC 1568 the Supreme Court had held that notice is necessary, and essential, where the proviso operates.

43. The order or scheme sought to be varied, is in the course of consolidation proceedings; it may well have acquired a finality, under the Act, in the sense, that the Consolidation Officer might have passed orders conforming the scheme, disposed of objections, effected repartition, and appeals too might be disposed of under the Act. In such a case, the requirement of notice, is to my mind, a fundamental one, preconditioning exercise of the power under Section 42 itself. There is no question of waiver of such a requirement.

44. It has been urged that the petitioners waived their right to notice under Section 42; their conduct in appearing in the proceedings and addressing the Financial Commissioner, has been cited in support of this argument. This argument, in my opinion, is not sustainable. Firstly, not all the parties likely to be affected appeared in the proceedings. Some of them including the petitioners certainly did so. Secondly, there was no indication about the nature of orders likely to be passed, or the outcome of proceedings under Section 42. Fairness demanded that if the Financial Commissioner was forming an opinion that the petitioner, and persons of their class were interested, or likely to be affected, individual notices ought to have been issued. Thirdly the injustice apparent in the proceedings would be clear from the fact that even while not dealing with individuals, by one stroke, the Financial Commissioner has invalidated an entire set of transactions in respect of which even mutations were effected. I am of the view that such a course of action, "declaring" an entire class of transactions, illegal, or contrary to law, was not permissible to quasi-judicial Tribunal, under Section 42. Even the High Court, under Article 226 of the Constitution, normally refrains from such a general or "class" declaration.

45. The contesting respondents had also taken the position that the present case fell in the category of the exception to

*Section 42 i.e. involving "**unlawful consideration**" and, therefore, notice was not necessary. **Unlawful consideration** has nowhere been defined under the Act. However, as generic expression, it has a meaning; Section 23 of the Contract Act, 1872 provides a clue about its purport; it states that the **consideration** or object of an agreement is lawful, unless it is forbidden by law; or is of such a nature that, if permitted, would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of another; or the Court regards it as immoral, or opposed to public policy. In each of these cases the **consideration** or object of an agreement is said to be **unlawful**.*

*46. The expression "**unlawful consideration**" is a strong one; in addition, for dispensing with the requirement of a notice, the Financial Commissioner has to form an opinion in that regard. There, is nothing in the impugned order, stating that the Financial Commissioner formed such an opinion. Suspicion is no doubt cast about the manner in which the resolution was diarised, the seeming irregularity in considering the sale transactions registered in Bombay, etc. There is also a reference to criminal investigations., Yet, there is no expression of opinion, in terms of Proviso to Section 42, stating that for given reasons, the order required to be varied, since the proceedings were vitiated by **unlawful consideration**. I am, therefore, of the view that the exception to the proviso was not attracted. The Financial Commissioner was under a duty to give notice, no factor relieving him of that duty was placed on record; he did not form the requisite opinion.*

47. In the decision reported as State of U.P. v. Singhara Singh,AIR 1964 SC 358, the Supreme Court, speaking about the mandatory nature of a statutory obligation and the duty to act only in the manner prescribed, held as follows:

> *"In Nazir Ahmed case AIR 1936 PC 253, the Judicial Committee observed that the principle applied in Taylor v. Taylor, 1875 (1) ChD. 426, to a Court, namely, that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden."*
>
> *I am of the considered opinion, that there was no question of dispensing with the requirement of notice and a hearing under Section 42 since it was of the essence, and in fact a precondition for the exercise of jurisdiction of the Financial Commissioner. The petitioners were entitled to notice, and reasonable hearing in accordance with that provision, since their valuable rights were affected. As the order of the Financial Commissioner itself shows, the rights to property, indeed validity of the sale transactions in their favour have been set aside."*

44. The Supreme Court, in *Bagirath Singh v. State of Haryana,* (2005) 7 SCC 556, upheld the findings of the Punjab High Court that variation of a scheme in exercise of power under Section 42, without giving notice to the parties interested, was not sustainable. In *Swaran Singh v. State of Punjab,* (1994) 3 SCC 544, the Court, quoting another earlier

decision, in the context of *locus standi* of a person in possession, even though not in the capacity of a right holder, stated as follows:

> *"In Paras Ram v. State of Punjab 1969 PLJ 97 (P&H) Justice Sarkaria, as he then was, considered the scope of the proviso to Section 42 and held thus :*
>
> > *"The proviso to Section 42 of the Act embodies a fundamental canon of natural justice. It is founded on the maxim that no one should be condemned unheard. The word 'interested' in the proviso, therefore, is to be interpreted in a very generous spirit and its wide amplitude should not be allowed to be whittled down by legal quibbles. In its dictionary sense, the word 'interested' means 'concern', 'affected', 'having an interest, right or title to, a claim upon or a share in something'. The word 'interested' therefore, embraces within its scope not only landowners, rightholders, tenants and settlers, but also all persons who have a claim upon the land or the property which is the subject-matter of the case before the Government under Section 42 of the Act. The test for determining whether or not a particular person is a 'party interested' within the contemplation of the proviso, is, whether he is likely to be affected by the decision or the result of the proceedings. In the present case, the petitioners satisfy that test. It cannot be denied that the impugned order might adversely affect the petitioners by causing shrinkage or disappearance of the surplus area on which they have settled. Surely, they are not trespassers. They have been inducted by the Collector in accordance with a statutory scheme for utilisation of surplus area drawn up under the Tenancy Act. It is true that as a result of the*

order, dated 20-6-1967, of the Commissioner, the matter has been reopened, but that does not mean that the petitioners have ceased to be 'parties interested' within the meaning of the proviso to Section 42 of the Act. Admittedly, they are still in cultivating possession of the land. They have not been evicted from the area on which they were settled."

45. The conditions for exercise of Section 42 have been clearly and unambiguously spelt out; the Proviso, which controls the discretion of the authority exercising the power, is couched in imperative language. Therefore, the exception to the proviso, which enacts a rule of natural justice, has to be of necessity construed in terms of the statute. Absent any material on record regarding the order which has to be revised, and that natural justice has to be dispensed with because the materials on record show that it was vitiated by unlawful consideration, the entire exercise itself would be suspect, and unlawful, for not complying with principles of natural justice, and denying hearing to the parties likely to be affected. This rule of strict interpretation of an exception, has been discussed in the decision reported as *Sudesh Kumar v. State of Haryana,*(2005) 11 SCC 525, in the

following terms:

> *"It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order are that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not disputed that, by order dated 23-12-1999, the visa of the complainant was extended up to 22-12-2000. Therefore, there was no difficulty in securing the presence of Mr Kenichi Tanaka in the inquiry."*

46. Similarly, in *Kush Saigal v. M.C. Mitter,* (2000) 4 SCC 526, the Supreme Court discussed the function and role of a proviso as follows:

> "*the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. (See Kedarnath Jute Mfg. Co. Ltd. v. CTO AIR 1966 SC 12.) Since the natural presumption is that but for the proviso, the enacting part of the section would have included the subject-matter of the proviso, the enacting part has to be given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided (see Justice G. P. Singh's Principles of Statutory Interpretation, 7th Edn., 1999, p. 163). This principle has been deduced from the decision of the Privy Council in Govt. of the Province of Bombay v. Hormusji Manekji AIR*

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1947 PC 200 as also the decision of this Court in Durga Dutt Sharma v. Navaratna Pharmaceutical Laboratories AIR 1965 SC 980"

47. It has been held that inconvenience to the authority taking the decision (i.e large number of affected persons) is not a ground to deny right of hearing, in *West Bengal Electricity Regulatory Commission v. CESC Ltd.,*(2002) 8 SCC 715, in the following terms:

> *"That apart, when a statute confers a right which is in conformity with the principles of natural justice, in our opinion, the same cannot be negatived by a court on an imaginary ground that there is a likelihood of an unmanageable hearing before the forum concerned. As noticed above, though normally price fixation is in the nature of a legislative function and the principles of natural justice are not normally applicable, in cases where such right is conferred under a statute, it becomes a vested right, compliance of which becomes mandatory. While the requirement of the principles of natural justice can be taken away by a statute, such a right when given under the statute cannot be taken away by courts on the ground of practical inconvenience, even if such inconvenience does in fact exist. In our opinion, the statute having conferred a right on the consumer to be heard in the matter pertaining to determination of the tariff, the High Court was in error in denying that right to the consumers. Consequently, the right of the consumers to prefer an appeal under Section 27 of the 1998 Act to the High Court is similar, if they are in any manner aggrieved by any order made by the Commission".*

48. In a similar vein, the Supreme Court, in *Onkar Lal Bajaj v. Union of India,*(2003) 2 SCC 673 held that a vague determination of large

scale irregularity could not justify a decision to reverse allotments, if the administrative agency could collect and issue nuanced, or individual orders. This decision is of particular relevance in the present case, because the impugned variation was directed on conjectural assumptions that the entire consolidation process had taken place in one day, an incredulous event, and that the entire process was tainted. The Supreme Court held, in *Onkarlal Bajaj*, as follows:

> *"In governance, controversies are bound to arise. In a given situation, depending upon facts and figures, it may be legally permissible to resort to such en masse cancellation where the executive finds that prima facie a large number of such selections were tainted and segregation of good and bad would be difficult and a time-consuming affair. That is, however, not the case. Here the controversy raised was in respect of 5 to 10%, as earlier indicated. In such a situation, en masse cancellation would be unjustified and arbitrary. It seems that the impugned order was a result of panic reaction of the Government. No facts and figures were gone into. Without application of mind to any of the relevant considerations, a decision was taken to cancel all allotments. The impugned action is clearly against fair play in action. It cannot be held to be reasonable. It is nothing but arbitrary.*
>
> ***44.*** *Regarding the probity in governance, fair play in action and larger public interest, except contending that as a result of media exposure, the Government in public interest decided to cancel all allotments, nothing tangible was brought to our notice. On 5-8-2002 the only reason was that "a controversy" had been raised. In the order dated 9-8-2002 the reasons given are that facts and circumstances considered and to ensure fair play in action and in public interest, it was passed. In the counter-affidavit, the aspect of probity in governance has been brought in. Be that as it may, the fact remains that admittedly, no case was examined, not even from a prima facie angle to find out whether there was any substance in the*

media exposure. None examined the impact that was likely to result because of en masse cancellation. Many had resigned their jobs. It was necessary because of such a stipulation in LOI. Many had taken huge loans. There were many Scheduled Castes/Scheduled Tribes, war widows and those whose near relation had died as a result of terrorist activities. The effect of none was considered. How could all those large number against whom there was not even insinuation be clubbed with the handful of those who were said to have been allotted these dealerships/distributorships on account of political connection and patronage? The two were clearly unequals. The rotten apples cannot be equated with good apples. Under these circumstances, the plea of probity in governance or fair play in action motivating the impugned action cannot be accepted. The impugned order looked from any angle cannot stand the scrutiny of law.

45. *The solution by resorting to cancellation of all was worse than the problem. Cure was worse than the disease. Equal treatment to unequals is nothing but inequality. To put both the categories — tainted and the rest — on a par is wholly unjustified, arbitrary, unconstitutional being violative of Article 14 of the Constitution. It is apparent from the guidelines that the dealerships and distributorships were provided to be given to the allottees as a welfare measure. Even in respect of open category there is a limitation for the income of the applicant being not more than 2 lakhs per annum so as to be eligible for consideration by DSBs. DSBs are required to consider the applications within the parameters of the guidelines and select the best applicant. If DSBs in some cases have selected someone not on merits but as a result of political connections/considerations and positions of the applicant, undoubtedly such allotments deserve to be quashed. In Common Cause case[1] this Court on examination of the facts held that the allotment to the sons of the Ministers were only to oblige the Ministers. The allotments to the members of the Oil Selection Boards and their/Chairmen's relations had been done to influence them and to have favours from them. It was observed that a Minister who is the executive head of the department concerned, when distributing benefits and largesses in a welfare State in the form of allotment of plots, houses, petrol pumps, gas agencies, mineral leases, contracts, quotas and licences etc. has to deal with people's property in a fair and just manner. He holds all these as a trust on behalf of the people. He cannot commit breach of the trust reposed in him by the people."*

49. It is evident from these reported decisions that the exercise of power, wherever conditioned, or controlled by directions of having to follow principles of natural justice, is exercisable only subject to that imperative. Absent compliance, the exercise becomes suspect; indeed void. That the condition is founded on a proviso, is immaterial. In this case, the proviso is hedged with an exception; that however, is subject to a determination or opinion that hearing is unnecessary if the Financial Commissioner considers that the order in question was vitiated on account of unlawful consideration. As explained in *Rajender Singh (supra)* "unlawful consideration" has a definite legal connotation. Here, the Lt. Governor, exercising power under Section 42, relied entirely upon a report; neither the report, the order of the Lt. Governor (dated 17-5-2002) gives any glimpse that the authorities felt that the repartion orders, and exercise of power to hand over possession were carried out for unlawful considertation, in abuse of lawful power, for oblique motives, or that the transactions were sham or bogus. The Govt. of NCT has also not produced

any file or executive determination as per its records that an opinion existed that the orders of the Consolidation officer, and the consolidation proceedings, in repartition were for unlawful consideration, or any other illegal object.

50. The facts of this case also do not disclose any compelling necessity (not that even if it existed, that could have been a legitimate ground to ignore the requirement of natural justice) in invoking the "unlawful consideration" exception. Indisputably, the re-partition proceedings, described the beneficiaries, and the benefits secured by them, the lands allotted and handed over to them, etc. In other words, all particulars relating to the allotteees were available. No overt act of impropriety of any such class of persons, was discussed. Therefore, the official respondents could not even claim ignorance about who were to be given notice and hearing.

51. A faint attempt had been made during course of hearing that the lands have since been notified for acquisition, and that all the petitions ought to be dismissed. This argument, in my opinion, overlooks that if the

merits of the claims are left un-adjudicated, it would lead to utter chaos, when the legitimacy of claims under the Land Acquisition Act are to be determined. The entire proceedings would have the potential of developing into a veritable legal minefield, a situation hardly conducive to public interest. Rival claims in respect of compensation amounts, entitlements to parcels of lands, shares, etc would all be open to dispute.

52. In the light of the foregoing discussion, I am of the opinion that the *Neki* batch of petitions has to fail. The petitioner in *Dayanand* is entititled to succeed. The Govt of NCT and the Lt. Governor, are however, free to exercise power in terms of Section 42, after issuing notice to the parties likely to be affected by the order to be issued, and after hearing them. WP (C) No 2554/1997 and 2592/1997 are accordingly dismissed. Rule discharged in the said petitions. WP (C) No.5242/2000 is allowed; Rule made absolute. No costs.

53. These petitions sought initiation of contempt proceedings on allegations of wilful and deliberate contravention of courts orders, in *Neki* batch of petitions. In view of the decision on merits in those cases, the contempt petitions are disposed off in terms of the above judgments. Notices discharged; No costs.

(S. RAVINDRA BHAT)
JUDGE

18TH September, 2006