Before Mukul Mudgal, C.J. Jasbir Singh & Hemant Gupta, JJ.

JARNAIL SINGH AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

C.W.P. No. 2575 of 2009

1st October, 2010

Constitution of India, 1950—Art. 14, 21 & 226—Policy dated 26th September, 1994 for allotment of plots to oustees—Acquisition of land—Petitioners co-owners in a joint khata in revenue record-Cl.(6)(V) of Policy dated 26th September, 1994 restricting allotment of one plot to co-sharers—Whether illegal, arbitrary and discriminatory— Held, yes—Mere fact that two or more persons have not sought partition of their joint holding and/or are enjoying joint possession does not affect title of each of co-owners—Clause 6(V) of the Policy struck down as it has no reasonable nexus with the object to be achieved while granting liberty to State to reframe policy for reservation of plots to constitutionally permissible classes and within limit of 50% of plots.

Held, that :

(1) The oustees, whose land is compulsorily acquired for a public purpose, form a class in itself, having a rational basis with the object of resettlement;

(2) Clasue 6(V) of the Policy dated 26th September, 1994 is struck down as it has no reasonable nexus with the object to be achieved;

(3) A co-owner, as per the eligibility criteria fixed by the State Government, shall be entitled to be considered for allotment of plot irrespective of the fact that his holding of land is joint with other co-owner;

(4) However, the oustees, as a class in themselves, would be entitled to reservation of plots to such an extent as the State Government may deem appropriate;

(5) That the State Government shall be at liberty to reframe policy for reservation of plots to constitutionally permissible classes and within limit of 50% of plots: and

(6) That till such time an appropriate policy is framed, the State Government or its instrumentalities shall not allot plots under the oustees quota.

(Para 32)

Arun Palli, Senior Advocate, with Tushar Sharma, Advocate, *for the petitioners.*

Rupinder Khosla, Addl. AG, Punjab, *for respondent No. 1.*

D.V. Sharma, Senior Advocate, with Ms. Shivani Sharma, Advocate, *for respondent Nos. 2 and 3.*

(2) C.W.P. No. 2458 of 2009.

(3) C.W.P. No. 2563 of 2009

(4) C.W.P. No. 3830 of 2009

(5) C.W.P. No. 4090 of 2009

(6) C.W.P. No. 16831 of 2009

S.S. Rathore, Advocate, *for the petitioners.*

Rupinder Khosla, Addl. A.G., Punjab, *for respondent No. 1.*

D.V. Sharma, Senior Advvocate, with Ms. Shivani Sharma, Advocate, *for respondent Nos. 2 and 3.*

(7) C.W.P. No. 18522 of 2009

Harish Goyal, Advocate, *for the petitioners.*

Rupinder Khosla, Addl. A.G., Punjab, *for respondent No. 1.*

D.V. Sharma, Senior Advvocate, with Ms. Shivani Sharma, Advocate, *for respondent Nos. 2 and 3.*

(8) C.W.P. No. 3181 of 2009

(9) C.W.P. No. 18569 of 2009

Deepak Sharma, Advocate, *for the petitioners.*

Rupinder Khosla, Addl. A.G., Punjab, *for respondent No. 1.*

D.V. Sharma, Senior Advvocate, with Ms. Shivani Sharma, Advocate, *for respondent Nos. 2 and 3.*

HEMANT GUPTA. J.

(1) The present writ petitions have been placed before this Bench on a reference made by the learned Single Judge of this Court wherein challenge has been made to Clause 6(v) of the policy dated 26th September, 1994 restricting the allotment of one plot to the oustees who have a joint holding. As the learned Single Judge found that judgement of the Division Bench in **Smt.Ramo Bai and others** *versus* **State of Haryana and others, (1)** acknowledged some apparent distinction between the policies as applicable in the State of Punjab and Haryana.

(2) Since the issue is legal, factual matrix in respect of land holding of each writ petitioner and consequent eligibility for allotment of a plot as an oustee need not be mentioned in detail. Suffice it to state that the writ petitioners are reflected as co-owners in a joint Khata in the revenue record whereas in terms of the policy dated 26th September, 1994, all such joint owners are entitled to a plot of land not exceeding 500 sq. yards as a rehabilitation measure. The grievance of the petitioner is that all the co-owners have an independent right to own and possess the land falling to the share of each of them, therefore in terms of the policy dated 26th September, 1994, each of the co-owner is entitled to allotment of plot of requisite size. The restriction of allotment of one plot to the co-owners is without any reasonable classification and objective to be achieved and thus, have sought quashing of Clause 6(V) of the Scheme.

(3) At this stage, the details of the policy framed by the State Government from time to time providing allotment of a plot to a landowner whose land has been acquired under the Land Acquisition Act, 1894 need to be stated.

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(1) 2007 (4) P.L.R. 295

(4) The first policy conferring right of allotment of a plot to a person whose land has been acquired was formulated by the State Government and circulated on 17th April, 1974, Annexure P5/A, The said policy also contemplated creation of plots of different size in each of urban estates, eligibility for allotment of such plots and reservation policy for allotment of plots to the Oustees, Defence Personnel, Punjab Government Employees, Scheduled Castes and Backward Classes etc. The relevant policy in respect of oustees reads as under :—

"**Reservation Policy**

8. It has been decided to revise the existing policy of reservation as follows :—

(i) Before any plots are allotted, all oustees whose land has been acquired for the setting up of an Estate shall be accommodated within the frame work of the income criteria (prescribed) mentioned above. Further, all war widows will also be accommodated on cent-percent basis and plots allotted them as per their requirements and social needs

(ii) Defence Personel

xxx xxx

(iii) Punjab Government Employees

xxx xxx"

(5) On 29th September, 1981,—*vide* Annexure P5/B, another circular was issued whereby the Government decided to allot a plot to an oustee but by restricting right of allotment of plot to such an oustee or his family which means wife and minor children and who does not own another plot or house within an urban area. It further contemplates that no application from oustee shall be received after a period of three years from the date of acquisition of land . It further provided as under :—

"(i) The plot shall be allotted to an oustee in the Urban Estate for his *bona fide* residence. This will be subject to the condition that the oustee or his family which means wife and minor children, do not own another plot or house within an urban area.

(ii) No application from the oustees shall be received after a period of three years from the date of acquisition of land. The oustees shall be allotted plots on first come first served basis.

(iii) Individual oustees shall not be allotted plots measuring more than 200 sq. yards. The criteria for the allotment of plots upto 200 sq. yards shall be as under :—

	Land acquired	Size of plot	Gross Annual income
(a)	1/2 acre to 3 acres	100 sq. yds.	Upto Rs. 8000
(b)	Above 3 acres upto 5 acres	150 sq. yds.	Above Rs. 8000 upto Rs. 12000
(c)	Above 5 acres	200 sq. yds.	Above Rs. 12000 upto Rs. 20,000

Explanation A: However, if on the land acquired there were built up properties. 100 sq. yds., plots may be allotted although the area acquired may be less than acre, this will be subject to the Gross annual

Explanation B :It is specifically stated here that both the requirements, i.e. regarding land acquired as also the income shall have to be met before any person becomes eligible.

(iv) 10% each of the plots measuring 200 sq. yds. shall be reserved for allotment to the oustees. If the number of applications of the oustees is less, the remaining plots reserved for oustees shall be allotted as per policy.

(v) Where the land acquired was owned jointly all the oustees would be entitled jointly for one plot only."

(6) On 26th May, 1983, another policy, Annexure P-5C, was issued wherein percentage of size of plot to be allotted in each urban estate and Reservations of plot to certain categories were redefined so as to include Members of Parliament, Members of Punjab Legislative Assembly,

Defence Personel, SC/BC, Non Resident Indians and the discretionary quota. In respect of allotment of plot to an oustee, it was decided that plot should be allotted to an oustee in the Urban Estate for his *bona fide* residence and the oustee will be entitled to allotment of a plot in the following manner :—

"ACCOMODATION OF OUSTEES :

The Policy regarding the allotment of plots to oustees will be as under :—

(i) The plot should be allotted to an oustee in the Urban Estate for his *bona fide* residence ;

(ii) No application from the oustee should be entertained after a period of three years from the date of taking possession of his acquired land. This would, however, apply to the future oustees. The present oustees would be given one year's time to apply for the allotment of plots :—

(iii) An oustee would only be allotted plot on the following basis :—

Land Acquired	**Size of plot**
(a) 1/2 acre to 3 acres	100 sq. yds.
(b) between three to five	200 sq. yds.
(c) Above five acres	500 sq. yds.
(unless he asks for a small plot)	

Explanations :

However, if on the land acquired there was a dwelling unit, 100 sq. yds, plot may be allotted even though the acquired may be less than 1/2 shares :

(iv) The price chargeable for allotment of plots to the oustees would be same as for general category :

(v) All oustees of any joint Khata would be entitled to one plot only".

(7) On 26th June, 1994, the policy, Annexue PD, in respect of allotment of plots to the oustees was circulated. It is the said policy which is now under consideration. It contemplates reservation of plot to different categories such as Members of Parliament, Member of Legislative Assembly elected from Punjab, Freedom Fighters of Punjab State, Defence Personnel, Punjab Government employees and widows of State Government employees who dies in harness, Scheduled Caste/Backward Class, Riot victims of 1984, terrorist victims, Non-resident Indians etc. It also provided allotment of plots to the oustees. The relevant clause reads as under :—

"76 Policy for Oustees

Policy for allotment of plots to oustees would be as under :--

(i) The plot would be allotted to an oustee in Urban Estate for his *bona fide* residence.

(ii) The application from the oustee will be entertained after a period of one year from the date of taking possession of his acquired land.

(iii) An oustee would only be allotted a plot on the following basis :—

Land Acquired	**Size of plot**
(a) 1/2 acre to 3 acres	100 sq. yds.
(b) between three to five	200 sq. yds.
(c) Above five acres	500 sq. yds.

However, if on the land there is a dwelling unit, 100 sq. yds, plot may be allotted even though the area acquired may be less than 1/2 acres :

(iv) The price chargeable for allotment of plots to the oustees would be same as for general category :

(v) All oustees of any joint Khata would be entitled to one plot only".

(8) The petitioners have also made reference to the order passed by a Division Bench of this Court in **CWP No. 4837 of 1981** titled **Karam Singh and others** *versus* **State of Punjab and others, decided on 4th May, 1982.** In the aforesaid case, the petitioners who were holding land jointly were found entitled to separate plots as each of the co-owner has been paid compensation separately. The petitioners, in the said case, were claiming allotment of plot under the first policy of the year 1974 . A new policy was circulated on 29th September, 1981 before the writ petition came up for decision. The Court found that even in terms of new policy, the petitioner who has been paid compensation separate as a distinct co-owner is entitled to allotment of a separate plot. The said order was affirmed by the Hon'ble Supreme Court in **CA No. 168 of 1983** titled **State of Punjab and others** *versus* **Karam Singh and others**, decided on 11th September, 1997. On the basis of the aforesaid judgment and the judgments dealing with the right of co-sharer i.e., **Sant Ram Nagina Ram** *versus* **Daya Ram Nagina Ram (2) Bhartu** *versus* **Ram Sarup, (3) Ram Chander** *versus* **Bhim Singh and others (4)** ; and **Re : Special Court Bill (5).** Learned counsel for the petitioners has vehemently argued that a owner of specific share of land, even if he has joint holding with other co-owner is entitled to separate plot, of course of size as per his entitlement as per the scheme. It is argued that the mere fact that the land is reflected in the revenue record as joint, does not mean that the co-owner is not owner of a specific share in the property. It is contended that a co-owner has a specific share in the property and if such specific share satisfies the condition of eligibility for allotment of plot, then such co-owner is entitled to plot irrespective of the fact that the Khata is joint. It is contended that joint Khata is for the convenience of the co-owner for the purpose of irrigation and for enjoyment of fruits of agricultural land but that does not affect the extent of ownership of each of the co-owner. It is contended that a co-sharer has the same rights as an individual owner. A co-sharer has an inherent right to sell his undivided share as well. Each of the co-sharers, has an independent right and title to enjoy possession. The said clause does not take into consideration rights of the petitioners as joint owners and violates the right

(2) AIR 1961 Punjab 528
(3) 1981 P.L.J. 204 (F.B.)
(4) 2008 (3) (Civil) 685 (Five Judges Bench)
(5) 1979 (2) S.C.R. 476

of the petitioners as co-sharers. It is argued that for emample if two co-owners own 11 acres of land, then in terms of the policy, both the co-owners would be entitled to one plot of 500 square yards, but if the eligibility of both co-owners is separately determined, then both would be individually entitled to plot of 500 square yards as each of the co-owners is owner of the land measuring more than 5 acres. It is, thus contended that Clause 6(V) of the policy dated 16th September, 1994 is illegal, arbitrary, discriminatory, irrational and has no nexus with the object to be achieved i.e. resettlement of the land owners, who have been rendered landless on account of acquisition of their land.

(9) Learned counsel for the petitioners has referred to Re :Special Courts Bill's (supra), delineating the propositions in formulation of the principles for application of Article 14 of the Constitution of India. Learned counsel for the petitioness, in particular, relied upon principles 6 and 7, which read as under :—

> "6. The law can make and set apart classes according to the needs and exigencies of the society and as suggested by experience. It can recognize even degree of evil, but the classification should never be arbitrary, artificial or evasive.
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> 7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which destinguishes those that are grouped together from others and (2) that differentia must have a rational to the object sought to be achieved by the Act."

(10) Learned counsel for the petitioners also relied upon **Deepak Sibal** *vessus* **Punjab University and another, (6)** to contend that in considering the reasonableness of the classification from the point of view of Article 14 of the Constitution, the Court has to consider the objective

(6) AIR 1989 S.C. 903

for such classification and that if the objective is found to be illogical, unfair and unjust, then necessarily the classification will have to be held as unreasonable. Relying upon **State of Haryana** *versus* **Gurcharan Singh and others (7),** it was contended that once the State Government has decided to allot plots to the land owners whose lands have been acquired, such decision cannot be implemented in an unfair and unreasonable manner.

(11) On the other hand, learned counsel for the respondents has vehemently argued that the landowners have been paid compensation for the acquissition of land in accordance with the provisions of Land Acquisition Act, 1894. If the landowners are not satisfied with the compensation awarded by the Land Acquisition Collector under the Act, such landwners have a right to seek a remedy in a Reference and/or in appeal against the award of the Reference Court. The compensation paid is the market value of the land acquired. The landowners are also paid compensation for statutory acquisition and interest for the delayed payment. Such provisions are adequate to determine the market value of the land acquired. Since the landowners have been paid market value of the land acquired, the policy of allotment of a plot to such landowner is a concession. The concession can be availed only in the manner contemplated by the grantor. It is not open to the petitioner to dispute Clause 6(V) of the policy as terms of grant of concession cannot be permitted to be disputed.

(12) Learned counsel for the respondents further argued that if each of the landowners is considered eligible for allotment of a separate plot, if his landholding satisfies the eligibility condition for allotment of a plot of 200, 300 and 500 square yards, then large number of landowners would be eligible for allotment of plot. It is thus, contended that majority of the plots for allotment for residential purposes may not be available for allotment to the general category candidates as the plots are reserved for allotment to different categories i.e., Members of Parliament, Members of Legislative Assembly elected from Punjab, Freedom Fighters of Punjab State, Defence Personnel, Punjab Government employees and widows of State Government employees who dies in harness, Scheduled Caste/ Backward Class, Riot victims of 1984, terrorist victms, Non-resident Indians etc. It is pointed out that as per the Policy, 46% of the plots are reserved

(7) (2004) 12 S.C.C. 540

in favour of various categories, but if every co-sharer is also given individual plot, then the reservation would exceed 50%. Since the availability of plots is limited, the Policy was designed so as to strike a balance between the rights of general public and also to provide an opportunity of rehabilitation to the oustees. Such Policy cannot be said to be arbitrary, discriminatory. Reference was made to **State of Jharkhand and others** *versus* **Shiv Karampal Sahu. (8)** wherein Para No. 10 from the judgement in **Regional Director ESI Corpn.** *versus* **Ramanuja Match Industries ,(9)** was noticed, which reads as under :—

> "10.....We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."

(13) It is contended that the State Government or its agencies acquire land for development of residential, commercial area and for many other public purposes. If the plots are to be allotted to the oustees, as sought by the petitioners, then the entire purpose of acquisition will be defeated as no plots would be available for general public, the public purpose for which alone, the acquisition of land is permissible. Therefore, such clause has been introduced to provide an opportunity of allotment of a plot to general category candidate. Such a clause is in existence for more than two decades, therefore, it cannot be said that such restriction on a right of a co-owner to seek allotment of plot has no reasonable nexus with the object to be achieved. It is further pointed out that if there are three joint owners and the land acquired is 1/2 acre, all the co-sharers will be entitled to one plot of 100 square yards, but if their holding is to be treated as separate, none of the co-sharers would be entitled to any plot. It is pointed out that the bounty of a residential plot is not to be showered upon the oustees. The cut off in respect of the entitlement has to be fixed and is reasonable.

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(8) (2009) 11 S.C.C. 453

(9) (1985) 1 S.C.C. 218

(14) Reliance was placed upon **Satluj Jal Vidyut Nigam Ltd. and another** *versus* **Dila Ram and others, (10),** wherein the scheme formulated by a statutory corporation for resettlement and rehabilitation of the persons, whose land has been acquired, providing benefit to only one member of the family, was found to be justified. Reliance was placed upon the following observations of the Hon'ble Supreme Court in the said judgment :—

> "The test to be adopted under the Scheme was whether there was joint holding and relationship as a family. The High Court seems to have understood that the Scheme was intended to give benefits to each member of the landless family. If this interpretation were to be accepted, then the Corporation would have to provide more land for distribution to each members of the landless family than, perhaps, even the total land acquired".

(15) The arguments raised by the learned counsel for the parties give rise to the following questions :—

1. Whether the oustees form a class entitled to plot on account of acquisition of land for residential purposes by State Government and/or its instrumentalities ?

2. Whether Clause 6(V) of the Policy dated 26th September, 1994 restricting the right of co-owner to seek allotment of plot, is illegal, arbitrary and discriminatory as it has no nexus with the object to be achieved ?

3. Whether certain percentage of plots is required to be reserved for oustees or that the oustees are entitled to preferential allotment of plots first without allotting the same to the general public ?

Question No. 1

(16) The concept of Policy for allotment of plots to rehabilitate and resettle the persons, whose land has been acquired firstly came to be recognized by the Hon'ble Supreme Court in **State of U.P.** *versus* **Smt. Pista Devi, (11)** in respect of the land acquired by Meerut Development

(10) (2005) 2 S.C.C. 122
(11) AIR 1986 S.C. 2025

Authority. The Court directed that as far as practicable, provide a house site or shop site of reasonable size on reasonable terms to each of the expropriated persons who have no houses or shop buildings in the urban area in view of the wholesome principles laid down by the Delhi Development Act.

(17) In **N.D. Jayal and another** *versus* **Union of India and others (12)** the Court was, *inter-alia* considering the safety and environmental aspects of Tehri Dam. While considering the rehabilitation of the oustees on account of submerging of the Tehri Town and 22 villages, relying upon the judgment rendered in **Narmada Bachao Andolan** *versus* **Union of India (13)** it was held to the following effect :—

> "The last condition is rehabilitation which is not only about providing just food, clothes or shelter. It is also about extending support to rebuild livelihood by ensuring necessary amenities of life. Rehabilitation of the oustees is a logical corollary of Article 21. The oustees should be in a better position to lead a decent life and earn livelihood in the rehabilitated locations."

(18) The rehabilitation and resettlement of landowners, where land has been acquired, has been held to be a facet of Article 21 of the Constitution. The Policy framed by the State Government for allotment of a plot on fulfillment of the eligibility conditions, in fact, is creating a class requiring preferential allotment. Thus, the oustees form a distinct class, a class whose land has been acquired. The Policy contemplating allotment of plots to the oustees creates a class of persons entitled to preferential allotment than the general public. The Policy of allotment to an oustee is in fact reservation of plots to such class of eligible erstwhile land owners. If the oustees do not form a class entitled to reservation of plots, the scheme itself would be hit by the doctrine of equality enshrined by Article 14 of the Constitution of India. Therefore, the Policy contemplating the plots for oustees is nothing but a reservation of plots for such class.

Question No. 2.

(19) The first Policy framed by the State Government in the year 1974, is a policy providing reservations for various categories including the

(12) (2004) 9 S.C.C. 362
(13) (2000) 10 S.C.C. 664

oustees. The Policy Annexure P.5/B, circulated on 29th September, 1981 is only in respect of oustees, wherein the condition of allotment of one plot to the co-owners in a joint khata came to be introduced. In the Policy Annexure P.5/C, circulated in the year 1983, the reservation of plots to various categories was contemplated including the members of Legislative Assembly, Scheduled Castes, Backward Clases, Punjab Government employees etc. The numbers of plots available for allotment from amongst the oustees were not specified. Such class was clubbed with the Non Resident Indians. Similarly, in the year 1994, Policy Annexure P.5/D was formulated, whereby the oustees were not part of the categories for which the plots were reserved, but were treated as separate category and without specifying number of plots to be allotted to such category.

(20) We find that the restriction of allotment of one plot to a joint khata holder is unreasonable and arbitrary as each of the land owner is entitled to rehabilitation in his individual right. The rights of co-owners have been delineated in the judgment of this Court in **Sant Ram Nagina Ram's** and reiterated by a Five Judges Bench judgement in **Ram Chander's** cases *(supra)*. A co-owner is owner of land as much as his other co-owners are. Mere fact that two or more persons have not sought partition of their holding and/or are enjoying the joint possession, does not affect the title of each of the co-owners. The co-owners are deprived of their title and possession by way of acquisition of land. Therefore,there is no reasonable explanation as to why a co-owner has been made ineligible, except to the extent that number of co-owners would be so large, which will make the process of acquisition itself futile.

(21) Thus, we are of the opinion that the Clause restricting the allotment of one plot to all co-owners is irrational, arbitrary and with no reasonable nexus with the object to be achieved and thus, not sustainable. Therefore, we hold that Clause 6(V) of the Policy dated 16th September, 1994 restricting allotment of one plot to all the co-sharers, is illegal and void.

Question No. 3.

(22) Article 14 of the Constitution is to the effect that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The said mandate of the Constitution is applicable to all the actions of the State, be it administrative, executive,

or legislative. Article 15 prohibits the State to discriminate any citizen on the grounds of religion, race, caste, sex, place of birth or any of them. But sub clause (3) of Article 15 enables the State to make any special provision for women and children, whereas sub clause (4) enables the State to make a special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Article 16 of the Constitution is restricted to discrimination by the State in the matters relating to employment or appointment to any office under the State.

(23) It is on record, as mentioned by Shri D.V. Sharma Senior Advocate in the written note, that 46% of plots are reserved for different categories and if all the oustees, who are eligible as per the eligibility conditions, are allotted independent plots, then there may not be any plots left for the general public. The acquisition of land is not for settling the land owners, whose land has been acquired. The public purpose generally is for development of residential and commercial area. Said public purpose would be defeated if all the plots to be carved out after acquisition are reserved for one or the other category.

(24) In **Gazula Dasaratha Ram Rao** *versus* **State of A.P., (14),** a Constitution Bench has held that Article 14 enjoins the fundamental right of equality before law or the equal protection of law within the territory of India. It is available to all irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds i.e. religion, race, caste, sex, place of birth or any of them. It is available to citizens but is not restricted to any employment or office under the State. Article 16 gurantees equality of opportunities for all citizens in the country relating to employment or appointment in the office under the State. Article 14 guarantees general right of equality, whereas 15 and 16 are the instances of the same rights in favour of the citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State. Relevant extracts from the judgment reads as under :—

> "Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India.

(14) AIR 1961 S.C. 564

It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds-religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16, cl. (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and cl (2) prohibits discrimination on certain ground in respect of any such employment or appointment. It would thus appear that Art. 14 guarantees the general right of equality; Arts. 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Art. 16 the latter being confined to matters relating to employment or appointment to any office under the State...."

(25) In **A.P.** *versus* **P.B. Vijayakumar, (15)** it was held that both Articles 15 and 16 are designed for the same purpose of creating an egalitarian society. It was held to the following effect :—

"11. We do not, however, find any reason to hold that this rule is not within the ambit of Article 15(3), nor do we find it in any manner violative of Article 16(2) or 16(4) which have to be read harmoniously with Articles 15(1) and 15(3). Both reservation and affirmative action are permissible under Article 15(3) in connection with employment or posts under the State. Both Articles 15 and 16 are designed for the same purpose of creating an egalitarian society, As Thommen, J. has observed in Indra Sawhney's case *(supra)* (although his judgment is a minority judgment), "Equality is one of the magnificient cornerstones of Indian democracy", We have, however, yet to turn that corner. For that purpose it is necessary that Article 15(3) be read harmoniously with Article 16 to achieve the purpose for which these Articles have been framed."

(26) In **Ewanlangki-e-Rymbai** *versus* **Jaintia Hills District Council (16),** the Court found that Article 14 ensures equality before law and classification if it satisfies the twin test of its being founded on intelligible differentia, which in turn has a rational nexus with the object siught to be

(15) (1995) 4 S.C.C. 520
(16) (2006) 4 S.C.C. 748

achieved. It was further held that Article 15 prohibits the State from discriminating against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. This, however, is subject to the exception carved out by clauses (3) and (4) which permit special provisions to be made in favour of women & children and for socially and educationally backward classes of citizen i.e. for the Scheduled Castes and Scheduled Tribes. Article 16 also embodies the rule against discrimination, but is limited in its scope compared to Article 15, since it is confined to office or employment under the State, whereas Article 15 covers the entire range of State activities. Article 14 lays down the rule of equality in the widest term, while Article 15 prohibits discrimination on the grounds specified therein, but covering the entire range of State activities. Article 16 embodies the same rule but is narrower in its scope since it is confined to State activities relating to office or employment under the State. It was held to the following effect :

> "21. Article 14 ensures equality before law, which means that only persons who are in like circumstances should be treated equally. To treat equally those who are not equal would itself be violative of Article 14 which embodies a rule against arbitrariness. Thus, classification is permissible if it satisfies the twin test of its being founded on intelligible differentia, which in turn has rational nexus with the object sought to be achieved.
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> 22. Article 15 prohibits the State from discriminating against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. This, however, is subject to the exception carved out by clauses (3) and (4) which permit special provisions to be made in favour of women and children, and for socially and educationally backward classes of citizens i.e. for the Scheduled Castes and Scheduled Tribes. These are exceptions to the rule embodied in clauses (1) and (2) of Article 15.
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> 23. Article 16 embodies the rule against discrimination, but is limitted in its scope than Article 15, since it is confined to office of employment under the State, whereas Article 15 covers the entire range or State activities. Descent and residence are the two additional grounds on which discrimination is not permissible under Article 16. But the rule is again subject to the

exceptions carved out by clauses (3) to (5) thereof. Clause (5) is relevant for our purpose and it provides as under :—

"16. (5) Nothing in this clause shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

24. Thus Article 14 lays down the rule of equality in the widest term, while Article 15 prohibits discrimination on the ground specified therein but covering the entire range of State activities. Article 16 embodies the same rule but is narrower in its scope since it is confined to State activities relating to office or employment under the State. Both Articles 15 and 16 operate subject to exceptions therein. It has been so laid down by this Court in **Government of A.P.** *versus* **P.B. Vijayakumar and Gazula Dasaratha Rama Rao** *versus* **State of A.P."**

(27) The question which arises is whether reservation of plots exceeding 50% shall contravene the equality clause contained in Article 14 of the Constitution of India and the concept of maximum reservation to the extent of 50% can be applied in respect of allotment of plots as well.

(28) The Constitution Bench of the Hon'ble Supreme Court in **M.R. Balaji and others** *versus* **The State of Mysore and others, (17)** considered the scope of Article 15(4) for the purposes of admission in a professional medical college. While considering the extent of special provisions which the State is competent to make under Article 15(4) of the Constitution, it was held to the following effect :—

"34.....A special provision contemplated by Art. 15(4) like reservation of posts and appointments contemplated by Art. 16(4) must be within reasonable limits. The interests of weaker section of society which are a first charge on the States and the Centre have to be adjusted with the interests of the community as a whole. The adjustment of these competing claims is undoubtedly a difficult matter, but if under the guise of making a special provision, a State reserves practically all the seats available in all the colleges that clearly would be subverting the object of

(17) AIR 1963 S.C. 649

Art. 15(4). In this matter again we are reluctant to say definitely what would be a proper provision to make. Speaking generally and in a broad way, a special provision should be less than 50 per cent would depend upon the relevant prevailing circumstances in each case."

(29) In the aforesaid case, the Court struck down reservation to the extent of 68% as inconsistent with Article 15(4) of the Constitution

(30) In **Indra Sawhney ect.** *versus* **Union of India and others (18)** the earlier judgment in **M.R. Balaji's case** *(supra),* was approved. While considering question No. 6 i.e. to what extent can the reservation be made ? and whether the 50% rule enunciated in Balaji a binding rule or only a rule of caution or rule of prudence ?, it was held by the Court to the following effect :—

"93. In Balaji (AIR 1963 SC 649), a Constitution Bench of this Court rejected the argument that in the absence of a limitation contained in Article 15(4), no limitation can be prescribed by the Court on the extent of reservation. It observed that a provision under Article 15(4) being a "special provision " must be within reasonable limits."

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94A. ..... Just as every power must be exercised reasonably and fairly, the power conferred by clause (4) of Article 16 should also be exercised in a fair manner and within reasonable limits— and what is more reasonable than to say that reservation under clause (4) shall not exceed 50% of the appointments or posts, barring certain extra ordinary situations as explained hereinafter. From this point of view, the 27% reservation provided by the impugned Memorandums in favour of backward classes is well within the reasonable limits. Together with reservation in favour of Scheduled Castes and Scheduled Tribes, it comes to a total of 49.5%

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(18) AIR 1993 S.C. 447

From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause(4) of Article 16 should not exceed 50%.

While 50% shall be the rule, it is necessary not to put out of consideration certain extraordinary situations inherent in the great diversity of this country and the people. It might happen that in far-flung and remote areas the population inhabiting those areas might, on account of their being out of conditions peculiar to and characteristical to them, need to be treated in a different way, some relaxation in this strict rule may become imperative. In doing so, extreme caution is to be exercised and a special case made out."

(31) In **M. Nagaraj and others** *versus* **Union of India and others, (19),** while considering the maximum limit of reservation, it was held by the Hon'ble Supreme Court, to the following effect :—

"55. Word of caution against excess reservation was first pointed out in **G.M., S. Rly** *versus* **Rangachari,** AIR 1962 SC 36, Gajendragadkar, J. giving the majority judgment said that reservation under Article 16(4) is intended merely to give adequate representation to backward communities. It cannot be used for creating monopolies or for unduly or illegitimately disturbing the legitimate interests of other employees. A reasonable balance must be struck between the claims of Backward Classes and claims of other employees as well as the requirement of efficiency of administration.

56. However, the question of extent of reservation was not directly involved in Rangachari. It was directly involved in **M.R. Balaji** *versus* **State of Mysore** with reference to Article 15(4). In this case, 68% reservatiion under Article 15(4) was struck down as excessive and unconstitutional. Gajendragadkar, J. observed that special provision should be less than 50 per cent, how much less would depend on the relevant prevailing circumstances of each case.

57. But in **State of Kerala** *versus* **N. M. Thomas,** Krishna Iyer, J. expressed his concurrence with the views of Fazal Ali J. who

(19) (2006) 8 S.C.C. 212

said that although reservation cannot be so excessive as to destroy the principle of equality of opportunity under clause (1) of Article 16, yet it should be noted that the Constitution itself does not put any bar on the power of the Government under Article 16(4). If a State has 80% population which is backward then it would be meaningless to say that reservation should not cross 50%.

58. However, in *Indra Sawhney,* the majority held that the rule of 50% laid down in *Balaji* was a binding rule and not a mere rule of prudence."

(32) In view of the above, the writ petitions are disposed of with the following orders and directions :—

1. The oustees, whose land is compulsorily acquired for a public purpose, form a class in itself, having a rational basis with the object of resettlement ;

2. Clause 6(V) of the Policy dated 26th September, 1994 is struck down as it has no reasonable nexuse with the object to be achieved ;

3. A co-owner, as per the eligibility criteria fixed by the State Government, shall be entitled to be considered for allotment of plot irrespective of the fact that his holding of land is joint with other co-owner ;

4. However, the oustees, as a class in themselves, would be entitled to reservation of plots to such an extent as the State Government may deem appropriate ;

5. That the State Government shall be at liberty to reframe policy for reservation of plots to constitutionally permissible classes and within limit of 50% of plots ; and

6. That till such time an appropriate policy is framed, the State Government or its instrumentalities shall not allot plots under the oustees quota.

R.N.R.